CODE OF CRIMINAL PROCEDURE

CHAPTER 722

S. B. NO. 107

Effective January 1, 1966

An Act establishing and adopting a Code of Criminal Procedure for the State of Texas by revising and rearranging the statutes of this State which pertain to the trial of criminal cases, and by making various changes in, omissions from, and additions to such statutes; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1. That the following chapters and articles are hereby adopted and shall constitute and be known as the "Code of Criminal Procedure of the State of Texas":

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CHAPTER ONE

GENERAL PROVISIONS

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1.04 Due course of law.
1.05 Rights of accused.
1.06 Searches and seizures.
1.07 Right to bail.
1.08 Habeas corpus.
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Article 1.01 Short Title

This Act shall be known, and may be cited, as the "Code of Criminal Procedure".

Art. 1.02 Effective Date

This Code shall take effect and be in force on and after January 1, 1966. The procedure herein prescribed shall govern all criminal

proceedings instituted after the effective date of this Act and all proceedings pending upon the effective date hereof insofar as are applicable.

Art. 1.03 [1] [1] Objects of this Code

This Code is intended to embrace rules applicable to the prevention and prosecution of offenses against the laws of this State, and to make the rules of procedure in respect to the prevention and punishment of offenses intelligible to the officers who are to act under them, and to all persons whose rights are to be affected by them. It seeks:

1. To adopt measures for preventing the commission of crime;
2. To exclude the offender from all hope of escape;
3. To insure a trial with as little delay as is consistent with the ends of justice;
4. To bring to the investigation of each offense on the trial all the evidence tending to produce conviction or acquittal;
5. To insure a fair and impartial trial; and
6. The certain execution of the sentence of the law when declared.

Art. 1.04 [2] [3] Due course of law

No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

Art. 1.05 [3] [4] Rights of accused

In all criminal prosecutions the accused shall have a speedy public trial by an impartial jury. He shall have the right to demand the nature and cause of the accusation against him, and to have a copy thereof. He shall not be compelled to give evidence against himself. He shall have the right of being heard by himself, or counsel, or both; shall be confronted with the witnesses against him, and shall have compulsory process for obtaining witnesses in his favor. No person shall be held to answer for a felony unless on indictment of a grand jury.

Art. 1.06 [4] [5] Searches and seizures

The people shall be secure in their persons, houses, papers and possessions from all unreasonable seizures or searches. No warrant to search any place or to seize any person or thing shall issue without describing them as near as may be, nor without probable cause supported by oath or affirmation.

Art. 1.07 [5] [6] Right to bail

All prisoners shall be bailable unless for capital offenses when the proof is evident. This provision shall not be so construed as to prevent bail after indictment found upon examination of the evidence, in such manner as may be prescribed by law.

Art. 1.08 [6] [7] Habeas Corpus

The writ of habeas corpus is a writ of right and shall never be suspended.

Art. 1.09 [7] [8] Cruelty forbidden

Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted.

Art. 1.10 [8] [9] Jeopardy

No person for the same offense shall be twice put in jeopardy of life or liberty; nor shall a person be again put upon trial for the same offense, after a verdict of not guilty in a court of competent jurisdiction.

Art. 1.11 [9] [20] [21] Acquittal a bar

An acquittal of the defendant exempts him from a second trial or a second prosecution for the same offense, however irregular the proceedings may have been; but if the defendant shall have been acquitted upon trial in a court having no jurisdiction of the offense, he may be prosecuted again in a court having jurisdiction.

Art. 1.12 [10] [10] Right to jury

The right of trial by jury shall remain inviolate.

Art. 1.13 [10a] Waiver of trial by jury

The defendant in a criminal prosecution for any offense classified as a felony less than capital shall have the right, upon entering a plea, to waive the right of trial by jury, conditioned, however, that such waiver must be made in person by the defendant in writing in open court with the consent and approval of the court, and the attorney representing the State. The consent and approval by the court shall be entered of record on the minutes of the court, and the consent and approval of the attorney representing the State shall be in writing, signed by him, and filed in the papers of the cause before the defendant enters his plea. Before a defendant who has no attorney can agree to waive the jury, the court must appoint an attorney to represent him.

Art. 1.14 [11] [22] [23] Waiver of rights

The defendant in a criminal prosecution for any offense may waive any rights secured him by law except the right of trial by jury in a capital felony case in which the State has made known in open court in writing at least 15 days prior to trial that it will seek the death penalty. No case in which the State seeks the death penalty shall be tried until 15 days after such notice is given. When the State makes known to the court in writing in open court that it will not seek the death penalty in a capital case, the defendant may enter a plea of guilty before the court and waive trial by jury as provided

in Article 1.13, and in such case under no circumstances may the death penalty be imposed.

Art. 1.15 [12] [21] [22] Jury in felony

No person can be convicted of a felony except upon the verdict of a jury duly rendered and recorded, unless in felony cases less than capital the defendant, upon entering a plea, has in open court in person waived his right of a trial by jury in writing; provided, however, that it shall be necessary for the State to introduce evidence into the record showing the guilt of the defendant and said evidence shall be accepted by the court as the basis for its judgment and in no event shall a person charged be convicted upon his plea without sufficient evidence to support the same. The evidence may be stipulated if the defendant in such case consents in writing, in open court, to waive the appearance, confrontation, and cross-examination of witnesses, and further consents to the introduction of testimony by affidavits, written statements of witnesses, and any other documentary evidence in support of the judgment of the court. Such waiver and consent must be approved by the court in writing, and be filed, with all of such evidence, in the file of the papers of the cause.

Art. 1.16 [13] [11] Liberty of speech and press

Every person shall be at liberty to speak, write or publish his opinion on any subject, being liable for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press. In prosecutions for the publication of papers investigating the conduct of officers or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence. In all indictments for libels, the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases.

Art. 1.17 [14] [12] Religious belief

No person shall be disqualified to give evidence in any court of this State on account of his religious opinions, or for the want of any religious belief; but all oaths or affirmations shall be administered in the mode most binding upon the conscience, and shall be taken subject to the pains and penalties of perjury.

Art. 1.18 [15] [13] Outlawry and transportation

No citizen shall be outlawed, nor shall any person be transported out of the State for any offense committed within the same.

Art. 1.19 [16] [14] Corruption of blood, etc.

No conviction shall work corruption of blood or forfeiture of estate.

Art. 1.20 [17] [15] Conviction of treason

No person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on confession in open court.

Art. 1.21 [18] [16] Privilege of legislators

Senators and Representatives shall, except in cases of treason, felony or breach of the peace, be privileged from arrest during the session of the Legislature, and in going to and returning from the same, allowing one day for every twenty miles such member may reside from the place at which the Legislature is convened.

Art. 1.22 [19] [17] Privilege of voters

Voters shall, in all cases, except treason, felony or breach of the peace, be privileged from arrest during their attendance at elections, and in going to and returning therefrom.

Art. 1.23 [20] [19] Dignity of State

All judges of the Supreme Court, Court of Criminal Appeals and District Courts, shall, by virtue of their offices, be conservators of the peace throughout the State. The style of all writs and process shall be "The State of Texas". All prosecutions shall be carried on in the name and by authority of "The State of Texas", and conclude, "against the peace and dignity of the State".

Art. 1.24 [21] [23] [24] Public trial

The proceedings and trials in all courts shall be public.

Art. 1.25 [22] [24] [25] Confronted by witnesses

The defendant, upon a trial, shall be confronted with the witnesses, except in certain cases provided for in this Code where depositions have been taken.

Art. 1.26 [23] [25] [26] Construction of this Code

The provisions of this Code shall be liberally construed, so as to attain the objects intended by the Legislature: The prevention, suppression and punishment of crime.

Art. 1.27 [24] [26] [27] Common law governs

If this Code fails to provide a rule of procedure in any particular state of case which may arise, the rules of the common law shall be applied and govern.

CHAPTER TWO

GENERAL DUTIES OF OFFICERS

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2.02 Duties of county attorneys.
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2.05 When complaint is made.
2.06 May administer oaths.
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2.18 Custody of prisoners.
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Article 2.01 [25] [30] [31] Duties of district attorneys

Each district attorney shall represent the State in all criminal cases in the district courts of his district, except in cases where he has been, before his election, employed adversely. When any criminal proceeding is had before an examining court in his district or before a judge upon habeas corpus, and he is notified of the same, and is at the time within his district, he shall represent the State therein, unless prevented by other official duties. It shall be the primary duty of all prosecuting attorneys, including any special prosecutors, not to convict, but to see that justice is done. They shall not suppress facts or secrete witnesses capable of establishing the innocence of the accused.

Art. 2.02 [26] [32] [33] Duties of county attorneys

The county attorney shall attend the terms of court in his county below the grade of district court, and shall represent the State in all criminal cases under examination or prosecution in said county; and in the absence of the district attorney he shall represent the State

alone and, when requested, shall aid the district attorney in the prosecution of any case in behalf of the State in the district court.

Art. 2.03 [27] [33] [34] Neglect of duty

(a) It shall be the duty of the attorney representing the State to present by information to the court having jurisdiction, any officer for neglect or failure of any duty enjoined upon such officer, when such neglect or failure can be presented by information, whenever it shall come to the knowledge of said attorney that there has been a neglect or failure of duty upon the part of said officer; and he shall bring to the notice of the grand jury any act of violation of law or neglect or failure of duty upon the part of any officer, when such violation, neglect or failure is not presented by information, and whenever the same may come to his knowledge.

(b) It is the duty of the trial court, the attorney representing the State, the attorney representing the accused, and all peace officers to so conduct themselves as to insure to the defendant a fair trial upon the presumption of innocence and at the same time afford the public the benefits of a free press.

Art. 2.04 [28] [34] [35] Shall draw complaints

Upon complaint being made before a district or county attorney that an offense has been committed in his district or county, he shall reduce the complaint to writing and cause the same to be signed and sworn to by the complainant, and it shall be duly attested by said attorney.

Art. 2.05 [29] [35] [36] When complaint is made

If the offense be a misdemeanor, the attorney shall forthwith prepare an information based upon such complaint and file the same in the court having jurisdiction; provided, that in counties having no county attorney, misdemeanor cases may be tried upon complaint alone, without an information, provided, however, in counties having one or more criminal district courts an information must be filed in each misdemeanor case. If the offense be a felony, he shall forthwith file the complaint with a magistrate of the county.

Art. 2.06 [30] [36] [37] May administer oaths

For the purpose mentioned in the two preceding Articles, district and county attorneys are authorized to administer oaths.

Art. 2.07 [31] [38] [39] Attorney pro tem

Whenever any district or county attorney fails to attend any term of the district, county or justice court, the judge of said court or such justice may appoint some competent attorney to perform the duties of such district or county attorney, who shall be allowed the same compensation for his services as is allowed the district attorney or county attorney. Said appointment shall not extend beyond the term of the court at which it is made, and shall be vacated upon the appearance of the district or county attorney.

Art. 2.08 [32] [40] [41] Disqualified

District and county attorneys shall not be of counsel adversely to the State in any case, in any court, nor shall they, after they cease to be such officers, be of counsel adversely to the State in any case in which they have been of counsel for the State.

Art. 2.09 [33] [41] [42] Who are magistrates

Each of the following officers is a magistrate within the meaning of this Code: The judges of the Supreme Court, the judges of the Court of Criminal Appeals, the judges of the District Court, the county judges, the judges of the county courts at law, judges of the county criminal courts, the justices of the peace, the mayors and recorders and the judges of the city courts of incorporated cities or towns.

Art. 2.10 [34] [42] [43] Duty of magistrates

It is the duty of every magistrate to preserve the peace within his jurisdiction by the use of all lawful means; to issue all process intended to aid in preventing and suppressing crime; to cause the arrest of offenders by the use of lawful means in order that they may be brought to punishment.

Art. 2.11 [35] [62] [63] Examining court

When the magistrate sits for the purpose of inquiring into a criminal accusation against any person, this is called an examining court.

Art. 2.12 [36] [43] [44] Who are peace officers

The following are peace officers: The sheriff and his deputies, constable, marshal or policemen of an incorporated town or city, the officers, noncommissioned officers and privates of the State Ranger Force and Department of Public Safety, law enforcement agents of the Texas Liquor Control Board, and any private persons specially appointed to execute criminal process.

Art. 2.13 [37] [44] [45] Duties and powers

It is the duty of every peace officer to preserve the peace within his jurisdiction. To effect this purpose, he shall use all lawful means. He shall in every case where he is authorized by the provisions of this Code, interfere without warrant to prevent or suppress crime. He shall execute all lawful process issued to him by any magistrate or court. He shall give notice to some magistrate of all offenses committed within his jurisdiction, where he has good reason to believe there has been a violation of the penal law. He shall arrest offenders without warrant in every case where he is authorized by law, in order that they may be taken before the proper magistrate or court and be tried.

Art. 2.14 [38] [45] [46] May summon aid

Whenever a peace officer meets with resistance in discharging any duty imposed upon him by law, he shall summon a sufficient number of citizens of his county to overcome the resistance; and all persons summoned are bound to obey.

Art. 2.15 [39] [46] [47] Person refusing to aid

The peace officer who has summoned any person to assist him in performing any duty shall report such person, if he refuse to obey, to the proper district or county attorney, in order that he may be prosecuted for the offense.

Art. 2.16 [40] [47] [48] Neglecting to execute process

If any sheriff or other officer shall wilfully refuse or fail from neglect to execute any summons, subpoena or attachment for a witness, or any other legal process which it is made his duty by law to execute, he shall be liable to a fine for contempt not less than ten nor more than two hundred dollars, at the discretion of the court. The payment of such fine shall be enforced in the same manner as fines for contempt in civil cases.

Art. 2.17 [41] [48] [49] Conservator of the peace

Each sheriff shall be a conservator of the peace in his county, and shall arrest all offenders against the laws of the State, in his view or hearing, and take them before the proper court for examination or trial. He shall quell and suppress all assaults and batteries, affrays, insurrections and unlawful assemblies. He shall apprehend and commit to jail all offenders, until an examination or trial can be had.

Art. 2.18 [42] [50] [51] Custody of prisoners

When a prisoner is committed to jail by warrant from a magistrate or court, he shall be placed in jail by the sheriff. It is a violation of duty on the part of any sheriff to permit a defendant so committed to remain out of jail, except that he may, when a defendant is committed for want of bail, or when he arrests in a bailable case, give the person arrested a reasonable time to procure bail; but he shall so guard the accused as to prevent escape.

Art. 2.19 [43] [51] Report as to prisoners

On the first day of each month, the sheriff shall give notice, in writing, to the district or county attorney, where there be one, as to all prisoners in his custody, naming them, and of the authority under which he detains them.

Art. 2.20 [44] [54] [55] Deputy

Wherever a duty is imposed by this Code upon the sheriff, the same duty may lawfully be performed by his deputy. When there is no sheriff in a county, the duties of that office, as to all proceedings

under the criminal law, devolve upon the officer who, under the law, is empowered to discharge the duties of sheriff, in case of vacancy in the office.

Art. 2.21 [45] [55] [56] Duty of clerks

Each clerk of the district or county court shall receive and file all papers in respect to criminal proceedings, issue all process in such cases, and perform all other duties imposed upon them by law.

Art. 2.22 [46] [56] [57] Power of deputy clerks

Whenever a duty is imposed upon the clerk of the district or county court, the same may be lawfully performed by his deputy.

Art. 2.23 [47] [57] [58] Report to Attorney General

The clerks of the district and county courts shall, when required by the Attorney General, report to him at such times, and in accordance with such forms as he may direct, such information in relation to criminal matters as may be shown by their records.

When any district clerk has failed, neglected or refused to make any such report after being requested in writing by the Attorney General to make such report, the Attorney General shall notify in writing the Comptroller of Public Accounts of such failure, neglect or refusal, and said Comptroller shall not thereafter draw any warrant in favor of said clerk until said report has been filed with the Attorney General.

CHAPTER THREE

DEFINITIONS

Art.
3.01 Words and phrases.
3.02 Criminal action.
3.03 Officers.

Article 3.01 [48] [58–59] Words and phrases

All words, phrases and terms used in this Code are to be taken and understood in their usual acceptation in common language, except where specially defined; and, unless herein specially excepted have the meaning which is given to them in the Penal Code.

Art. 3.02 [49] [60] [61] Criminal action

A criminal action is prosecuted in the name of the State of Texas against the accused, and is conducted by some person acting under the authority of the State, in accordance with its laws.

Art. 3.03 [50] [61] [62] Officers

The general term "officers" includes both magistrates and peace officers.

CHAPTER FOUR

COURTS AND CRIMINAL JURISDICTION

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4.01 What courts have criminal jurisdiction.
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4.16 Concurrent jurisdiction.

Article 4.01 [51] [63] [64] What courts have criminal jurisdiction

The following courts have jurisdiction in criminal actions:

1. The Court of Criminal Appeals;
2. The district courts;
3. The criminal district courts;
4. Courts of domestic relations where they have criminal jurisdiction by legislative enactment;
5. The county courts;
6. All county courts at law with criminal jurisdiction;
7. County criminal courts;
8. Justice courts; and
9. Corporation courts.

Art. 4.02 [52] Existing courts continued

No existing courts shall be abolished by this Code and shall continue with the jurisdiction, organization, terms and powers currently existing unless otherwise provided by law.

Art. 4.03 [53] [68–86–87] Court of Criminal Appeals

The Court of Criminal Appeals shall have appellate jurisdiction coextensive with the limits of the State in all criminal cases. This

Article shall not be so construed as to embrace any case which has been appealed from any inferior court to the county court, the county criminal court, or county court at law, in which the fine imposed by the county court, the county criminal court or county court at law shall not exceed one hundred dollars.

Art. 4.04 [53a] Mandamus, certiorari, and contempt

Sec. 1. In addition to the power and authority now vested in the Court of Criminal Appeals of the State of Texas, said court and each member thereof shall have, and is hereby given, power and authority to grant and issue and cause the issuance of writs of mandamus and certiorari agreeable to the principles of law regarding said writs, whenever in the judgment of said court or any member thereof the same should be necessary to enforce the jurisdiction of said court.

Sec. 2. The Court of Criminal Appeals of Texas, and each of the judges thereof, are hereby empowered to punish disobedience of any of the above-named writs and to hold in contempt any party found by said court to have wilfully disobeyed any of said writs so issued by said court or any of the members thereof.

Art. 4.05 [54] [88] [87] Jurisdiction of district courts

District courts and criminal district courts shall have original jurisdiction in criminal cases of the grade of felony, and of all misdemeanors involving official misconduct.

Art. 4.06 [55] [89] [88] When felony includes misdemeanor

Upon the trial of a felony case, the court shall hear and determine the case as to any grade of offense included in the indictment, whether the proof shows a felony or a misdemeanor.

Art. 4.07 [56] [98] [91] Jurisdiction of county courts

The county courts shall have original jurisdiction of all misdemeanors of which exclusive original jurisdiction is not given to the justice court, and when the fine to be imposed shall exceed two hundred dollars.

Art. 4.08 [57] [101–897] Appellate jurisdiction of county courts

The county courts shall have appellate jurisdiction in criminal cases of which justice courts and other inferior courts have original jurisdiction.

Art. 4.09 [58] [105] [95] Appeals from inferior court

If the jurisdiction of any county court has been transferred to the district court or to a county court at law, then an appeal from a justice or other inferior court will lie to the court to which such appellate jurisdiction has been transferred.

Art. 4.10 [59] [99] [92] To forfeit bail bonds

County courts and county courts at law shall have jurisdiction in the forfeiture and final judgment of all bail bonds and personal bonds taken in criminal cases of which said courts have jurisdiction.

Art. 4.11 [60] [106] [96] Jurisdiction of justice courts

Justices of the peace shall have jurisdiction in criminal cases where the fine to be imposed by law may not exceed two hundred dollars.

Art. 4.12 [60a] Misdemeanor cases; precinct in which defendant to be tried in justice court

A misdemeanor case to be tried in justice court shall be tried in the precinct in which the offense was committed, or in which the defendant or any of the defendants reside, or, with the written consent of the State and each defendant or his attorney, in any other precinct within the county; provided that in any misdemeanor case in which the offense was committed in a precinct where there is no qualified justice precinct court, then trial shall be had in the next adjacent precinct in the same county which may have a duly qualified justice precinct court, or in the precinct in which the defendant may reside; provided that in any such misdemeanor case, upon disqualification for any reason of all justices of the peace in the precinct where the offense was committed, such case may be tried in the next adjoining precinct in the same county, having a duly qualified justice of the peace.

Art. 4.13 [61] [107] [97] Justice may forfeit bond

A justice of the peace shall have the power to take forfeitures of all bonds given for the appearance of any party at his court, regardless of the amount.

Art. 4.14 [62] [108] [98] Corporation court

The corporation court in each incorporated city, town or village of this State shall have jurisdiction within the corporate limits in all criminal cases arising under the ordinances of such city, town or village, and shall have concurrent jurisdiction with any justice of the peace in any precinct in which said city, town or village is situated in all criminal cases arising under the criminal laws of this State, in which punishment is by fine only, and where the maximum of such fine may not exceed two hundred dollars, and arising within such corporate limits.

Art. 4.15 [63] [109] [99] May sit at any time

Justice courts and corporation courts may sit at any time to try criminal cases over which they have jurisdiction. Any case in which a fine may be assessed shall be tried in accordance with the rules of evidence and this Code.

Art. 4.16 [64] [63] Concurrent jurisdiction

When two or more courts have concurrent jurisdiction of any criminal offense, the court in which an indictment or a complaint shall first be filed shall retain jurisdiction except as provided in Article 4.12.

CHAPTER FIVE

PREVENTING OFFENSES BY THE ACT OF A PRIVATE PERSON

Art.
5.01 May prevent.
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5.03 To protect property.
5.04 Limit to resistance.
5.05 Excessive force.
5.06 Other person may prevent.
5.07 Defense of another.

Article 5.01 [65] [110] [100] May prevent

The commission of offenses may be prevented either by lawful resistance or by the intervention of the officers of the law.

Art. 5.02 [66] [111] [101] Resistance to protect person

Resistance by the party about to be injured may be used to prevent the commission of any offense which, in the Penal Code, is classed as an offense against the person.

Art. 5.03 [67] [112] [102] To protect property

Resistance may also be made by the person about to be injured, to prevent any illegal attempt by force to take or injure property in his lawful possession.

Art. 5.04 [68] [113] [103] Limit to resistance

The resistance which the person about to be injured may make to prevent the commission of the offense must be proportioned to the injury about to be inflicted. It must be only such as is necessary to repel the aggression.

Art. 5.05 [69] [114] [104] Excessive force

If the person about to be injured, in respect either to his person or property, uses a greater amount of force to resist such injury than is necessary to repel the aggressor and protect his own person or property, he is himself guilty of an illegal act, according to the nature and degree of the force which he has used.

Art. 5.06 [70] [115] [105] Other person may prevent

Any person other than the party about to be injured may also, by the use of necessary means, prevent the commission of the offense.

Art. 5.07 [71] [116] [106] Defense of another

The same rules which regulate the conduct of the person about to be injured, in repelling the aggression, are also applicable to the conduct of him who interferes in behalf of such person. He may use a degree of force proportioned to the injury about to be inflicted, and no greater.

CHAPTER SIX

PREVENTING OFFENSES BY THE ACT OF MAGISTRATES AND OTHER OFFICERS

Art.
6.01 When magistrate hears threat.
6.02 Threat to take life.
6.03 On attempt to injure.
6.04 May compel offender to give security.
6.05 Duty of peace officer as to threats.
6.06 Peace officer to prevent injury.
6.07 Conduct of peace officer.

Article 6.01 [72] [117] [107] When magistrate hears threat

It is the duty of every magistrate, when he may have heard, in any manner, that a threat has been made by one person to do some injury to himself or the person or property of another, immediately to give notice to some peace officer, in order that such peace officer may use lawful means to prevent the injury.

Art. 6.02 [73] [119] [109] Threat to take life

If, within the hearing of a magistrate, one person shall threaten to take the life of another or himself, the magistrate shall issue a warrant for the arrest of the person making the threat, or in case of emergency, he may himself immediately arrest such person.

Art. 6.03 [74] [118] [108] On attempt to injure

Whenever, in the presence or within the observation of a magistrate, an attempt is made by one person to inflict an injury upon himself or to the person or property of another, it is his duty to use all lawful means to prevent the injury. This may be done, either by verbal order to a peace officer to interfere and prevent the injury, or by the issuance of an order of arrest against the offender, or by arresting the offender; for which purpose he may call upon all persons present to assist in making the arrest.

Art. 6.04 [75] [120] [110] **May compel offender to give security**

When the person making such threat is brought before a magistrate, he may compel him to give security to keep the peace, or commit him to custody.

Art. 6.05 [76] [121] [111] **Duty of peace officer as to threats**

It is the duty of every peace officer, when he may have been informed in any manner that a threat has been made by one person to do some injury to himself or to the person or property of another, to prevent the threatened injury, if within his power; and, in order to do this, he may call in aid any number of citizens in his county. He may take such measures as the person about to be injured might for the prevention of the offense.

Art. 6.06 [77] [122] [112] **Peace officer to prevent injury**

Whenever, in the presence of a peace officer, or within his view, one person is about to commit an offense against the person or property of another or injure himself, it is his duty to prevent it; and, for this purpose the peace officer may summon any number of the citizens of his county to his aid. The peace officer must use the amount of force necessary to prevent the commission of the offense, and no greater.

Art. 6.07 [78] [123] [113] **Conduct of peace officer**

The conduct of peace officers, in preventing offenses about to be committed in their presence, or within their view, is to be regulated by the same rules as are prescribed to the action of the person about to be injured. They may use all force necessary to repel the aggression.

CHAPTER SEVEN

PROCEEDINGS BEFORE MAGISTRATES TO PREVENT OFFENSES

Art.
7.01 Shall issue warrant.
7.02 Appearance bond pending peace bond hearing.
7.03 Accused brought before magistrate.
7.04 Form of peace bond.
7.05 Oath of surety; bond filed.
7.06 Amount of bail.
7.07 Surety may exonerate himself.
7.08 Failure to give bond.
7.09 Discharge of defendant.
7.10 May discharge defendant.
7.11 Bond of person charged with libel.
7.12 Destruction of libel.

Art.
7.13 When the defendant has committed a crime.
7.14 Costs.
7.15 May order protection.
7.16 Suit on bond.
7.17 Limitation and procedure.

Article 7.01 [79] [124] [114] Shall issue warrant

Whenever a magistrate is informed upon oath that an offense is about to be committed against the person or property of the informant, or of another, or that any person has threatened to commit an offense, the magistrate shall immediately issue a warrant for the arrest of the accused, that he may be brought before such magistrate or before some other named in the warrant.

Art. 7.02 Appearance bond pending peace bond hearing

In proceedings under this Chapter, the accused shall have the right to make an appearance bond; such bond shall be conditioned as appearance bonds in other cases, and shall be further conditioned that the accused, pending the hearing, will not commit such offense and that he will keep the peace toward the person threatened or about to be injured, and toward all others, pending the hearing. Should the accused enter into such appearance bond, such fact shall not constitute any evidence of the accusation brought against him at the hearing on the merits before the magistrate.

Art. 7.03 [80] [125] [115] Accused brought before magistrate

When the accused has been brought before the magistrate, he shall hear proof as to the accusation, and if he be satisfied that there is just reason to apprehend that the offense was intended to be committed, or that the threat was seriously made, he shall make an order that the accused enter into bond in such sum as he may in his discretion require, conditioned that he will not commit such offense, and that he will keep the peace toward the person threatened or about to be injured, and toward all others named in the bond for any period of time, not to exceed one year from the date of the bond.

Art. 7.04 [81] [126] [116] Form of peace bond

Such bond shall be sufficient if it be payable to the State of Texas, conditioned as required in said order of the magistrate, be for some certain sum, and be signed by the defendant and his surety or sureties and dated, and the provisions of Article 17.02 permitting the deposit of current United States money in lieu of sureties is applicable to this bond. No error of form shall vitiate such bond, and no error in the proceedings prior to the execution of the bond shall be a defense in a suit thereon.

Art. 7.05 [82] [127] [117] Oath of surety; bond filed

The officer taking such bond shall require the sureties of the accused to make oath as to the value of their property as pointed out with regard to bail bonds. Such officer shall forthwith deposit such bond and oaths in the office of the clerk of the county where such bond is taken.

Art. 7.06 [83] [128] [118] Amount of bail

The magistrate, in fixing the amount of such bonds, shall be governed by the pecuniary circumstances of the accused and the nature of the offense threatened or about to be committed.

Art. 7.07 [84] [129] [119] Surety may exonerate himself

A surety upon any such bond may, at any time before a breach thereof, exonerate himself from the obligations of the same by delivering to any magistrate of the county where such bond was taken, the person of the defendant; and such magistrate shall in that case again require of the defendant bond, with other security in the same amount as the first bond; and the same proceeding shall be had as in the first instance, but the one year's time shall commence to run from the date of the first order.

Art. 7.08 [85] [130] [120] Failure to give bond

If the defendant fail to give bond, he shall be committed to jail for one year from the date of the first order requiring such bond.

Art. 7.09 [86] [131] [121] Discharge of defendant

A defendant committed for failing to give bond shall be discharged by the officer having him in custody, upon giving the required bond, or at the expiration of the time for which he has been committed.

Art. 7.10 [87] [132] [122] May discharge defendant

If the magistrate believes from the evidence that there is no good reason to apprehend that the offense was intended or will be committed, or that no serious threat was made by the defendant, he shall discharge the accused, and may, in his discretion, tax the cost of the proceeding against the party making the complaint.

Art. 7.11 [88] [133] [123] Bond of person charged with libel

If any person shall make oath, and shall convince the magistrate that he has good reason to believe that another is about to publish, sell or circulate, or is continuing to sell, publish or circulate any libel against him, or any such publication as is made an offense by the penal law of this State, the person accused of such intended publication may be required to enter into bond with security not to sell, publish or circulate such libelous publication, and the same proceedings be had as in the cases before enumerated in this Chapter.

Art. 7.12 [89] [159] [149] Destruction of libel

On conviction for making, writing, printing, publishing, selling or circulating a libel, the court may, if it be shown that there are in the hands of the defendant or another copies of such libel intended for publication, sale or distribution, order all such copies to be seized and destroyed by the sheriff or other proper officer.

Art. 7.13 [90] [134] [124] When the defendant has committed a crime

If it appears from the evidence before the magistrate that the defendant has committed a criminal offense, the same proceedings shall be had as in other cases where parties are charged with crime.

Art. 7.14 [91] [135] [125] Costs

If the accused is found subject to the charge and required to give bond, the costs of the proceedings shall be adjudged against him.

Art. 7.15 [92] [136] [126] May order protection

When, from the nature of the case and the proof offered to the magistrate, it may appear necessary and proper, he shall have a right to order any peace officer to protect the person or property of any individual threatened; and such peace officer shall have the right to summon aid by requiring any number of citizens of his county to assist in giving the protection.

Art. 7.16 [93] [137] [127] Suit on bond

A suit to forfeit any bond taken under the provisions of this Chapter shall be brought in the name of the State by the district or county attorney in the county where the bond was taken.

Art. 7.17 [94] [138] [128] Limitation and procedure

Suits upon such bonds shall be commenced within two years from the breach of the same, and not thereafter, and shall be governed by the same rules as civil actions, except that the sureties may be sued without joining the principal. To entitle the State to recover, it shall only be necessary to prove that the accused violated any condition of said bond. The full amount of such bond may be recovered of the accused and the sureties.

CHAPTER EIGHT

SUPPRESSION OF RIOTS AND OTHER DISTURBANCES

Art.
8.01 Officer may require aid.
8.02 Military aid in executing process.
8.03 Military aid in suppressing riots
8.04 Dispersing riot.
8.05 Officer may call aid.
8.06 Means adopted to suppress.
8.07 Unlawful assembly.
8.08 Suppression at election.
8.09 Power of special constable.

Article 8.01 [95] [139] [129] Officer may require aid

When any officer authorized to execute process is resisted, or when he has sufficient reason to believe that he will meet with resistance in executing the same, he may command as many of the citizens of his county as he may think proper; and the sheriff may call any military company in the county to aid him in overcoming the resistance, and if necessary, in seizing and arresting the persons engaged in such resistance.

Art. 8.02 [96] [140] [130] Military aid in executing process

If it be represented to the Governor in such manner as to satisfy him that the power of the county is not sufficient to enable the sheriff to execute process, he may, on application, order any military company of volunteers or militia company from another county to aid in overcoming such resistance.

Art. 8.03 [97] [141] [131] Military aid in suppressing riots

Whenever, for the purpose of suppressing riots or unlawful assemblies, the aid of military or militia companies is called, they shall obey the orders of the civil officer who is engaged in suppressing the same.

Art. 8.04 [98] [142] [132] Dispersing riot

Whenever a number of persons are assembled together in such a manner as to constitute a riot, according to the penal law of the State, it is the duty of every magistrate or peace officer to cause such persons to disperse. This may either be done by commanding them to disperse or by arresting the persons engaged, if necessary, either with or without warrant.

Art. 8.05 [99] [143] [133] Officer may call aid

In order to enable the officer to disperse a riot, he may call to his aid the power of the county in the same manner as is provided where it is necessary for the execution of process.

Art. 8.06 [100] [144] [134] Means adopted to suppress

The officer engaged in suppressing a riot, and those who aid him are authorized and justified in adopting such measures as are necessary to suppress the riot, but are not authorized to use any greater degree of force than is requisite to accomplish that object.

Art. 8.07 [101] [145] [135] Unlawful assembly

The Articles of this Chapter relating to the suppression of riots apply equally to an unlawful assembly and other unlawful disturbances, as defined by the Penal Code.

Art. 8.08 [102] [146] [136] Suppression at election

To suppress riots, unlawful assemblies and other disturbances at elections, any magistrate may appoint a sufficient number of special constables. Such appointments shall be made to each special constable, shall be in writing, dated and signed by the magistrate, and shall recite the purposes for which such appointment is made, and the length of time it is to continue. Before the same is delivered to such special constable, he shall take an oath before the magistrate to suppress, by lawful means, all riots, unlawful assemblies and breaches of the peace of which he may receive information, and to act impartially between all parties and persons interested in the result of the election.

Art. 8.09 [103] [147] [137] Power of special constable

Special constables so appointed shall, during the time for which they are appointed, exercise the powers and perform the duties properly belonging to peace officers.

CHAPTER NINE

OFFENSES INJURIOUS TO PUBLIC HEALTH

Art.
9.01 Trade injurious to health.
9.02 Refusal to give bond.
9.03 Requisites of bond.
9.04 Suit upon bond.
9.05 Proof.
9.06 Unwholesome food.

Article 9.01 [104] [148] [138] Trade injurious to health

After an indictment or information has been presented against any person for carrying on a trade, business or occupation injurious

to the health of those in the neighborhood, the court shall have power, on the application of anyone interested, and after hearing proof both for and against the accused, to restrain the defendant, in such penalty as may be deemed proper, from carrying on such trade, business or occupation, or may make such order respecting the manner and place of carrying on the same as may be deemed advisable; and if upon trial, the defendant be convicted, the restraint shall be made perpetual, and the party shall be required to enter into bond, with security, not to continue such trade, business or occupation to the detriment of the health of such neighborhood, or of any other neighborhood within the county.

Art. 9.02 [105] [149] [139] Refusal to give bond

If the party refuses to give bond when required under the provisions of the preceding Article, the court may either commit him to jail, or make an order requiring the sheriff to seize upon the implements of such trade, business or occupation, or the goods and property used in conducting such trade, business or occupation, and destroy the same.

Art. 9.03 [106] [150] [140] Requisites of bond

Such bond shall be payable to the State of Texas, in a reasonable amount to be fixed by the court, conditioned that the defendant will not carry on such trade, business or occupation, naming the same, at such place, naming the place, or at any other place in the county, to the detriment of the health of the neighborhood. The bond shall be signed by the defendant and his sureties and dated, and shall be approved by the court taking the same, and filed in such court.

Art. 9.04 [107] [151] [141] Suit upon bond

Any such bond, upon the breach thereof, may be sued upon by the district or county attorney, in the name of the State of Texas, within two years after such breach, and not afterwards; and such suits shall be governed by the same rules as civil actions.

Art. 9.05 [108] [152] [142] Proof

It shall be sufficient proof of the breach of any such bond to show that the party continued after executing the same, to carry on the trade, business or occupation which he bound himself to discontinue; and the full amount of such bond may be recovered of the defendant and his sureties.

Art. 9.06 [109] [153] [143] Unwholesome food

After conviction for selling unwholesome food or adulterated medicine, the court shall enter and issue an order to the sheriff or other proper officer to seize and destroy such as remains in the hands of the defendant.

CHAPTER TEN

OBSTRUCTIONS OF PUBLIC HIGHWAYS

Art.
10.01 Order to remove.
10.02 Bond of applicant.
10.03 Removal.

Article 10.01 [110] [155] [145] Order to remove

After prosecution begun against any person for obstructing any highway, any one, in behalf of the public, may apply to the county judge of the county in which such highway is situated; and upon hearing proof, such judge, either in term time or in vacation, may issue his written order to the sheriff or other proper officer of the county, directing him to remove the obstruction. Before the issuance of such order, the applicant therefor shall give bond with security in an amount to be fixed by the judge, to indemnify the accused, in case of his acquittal, for the loss he sustains. Such bond shall be approved by the county judge and filed with the papers in the cause.

Art. 10.02 [111] [156] [146] Bond of applicant

If the defendant be acquitted after a trial upon the merits of the case, he may maintain a civil action against the applicant and his sureties upon such bond, and may recover the full amount of the bond, or such damages, less than the full amount thereof, as may be assessed by a court or jury; provided, he shows on the trial that the place was not in fact, at the time he placed the obstruction or impediment thereupon, a public highway established by proper authority, but was in fact his own property or in his lawful possession.

Art. 10.03 [112] [158] [148] Removal

Upon the conviction of a defendant for obstructing a public highway, if such obstruction still exists, the court shall order the sheriff or other proper officer to forthwith remove the same at the cost of the defendant, to be taxed and collected as other costs in the case.

CHAPTER ELEVEN

HABEAS CORPUS

Art.
11.01 What writ is.
11.02 To whom directed.
11.03 Want of form.
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11.05 By whom writ may be granted.
11.06 Returnable to any county.

Art.
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11.40 Prisoner discharged.
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11.45 Void or informal.
11.46 If proof shows offense.
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11.48 Written issue not necessary.
11.49 Order of argument.
11.50 Costs.
11.51 Record of proceedings.
11.52 Proceedings had in vacation.
11.53 Construing the two preceding Articles.
11.54 Court may grant necessary orders.
11.55 Meaning of "return".

Art.
11.56 Effect of discharge before indictment.
11.57 Writ after indictment.
11.58 Person committed for a capital offense.
11.59 Obtaining writ a second time.
11.60 Refusing to execute writ.
11.61 Refusal to obey writ.
11.62 Refusal to give copy of process.
11.63 Held under Federal authority.
11.64 Application of Chapter.

Article 11.01 [113] [160–161] What writ is

The writ of habeas corpus is the remedy to be used when any person is restrained in his liberty. It is an order issued by a court or judge of competent jurisdiction, directed to any one having a person in his custody, or under his restraint, commanding him to produce such person, at a time and place named in the writ, and show why he is held in custody or under restraint.

Art. 11.02 [114] [162] [152] To whom directed

The writ runs in the name of "The State of Texas". It is addressed to a person having another under restraint, or in his custody, describing, as near as may be, the name of the office, if any, of the person to whom it is directed, and the name of the person said to be detained. It shall fix the time and place of return, and be signed by the judge, or by the clerk with his seal, where issued by a court.

Art. 11.03 [115] [163] [153] Want of form

The writ of habeas corpus is not invalid, nor shall it be disobeyed for any want of form, if it substantially appear that it is issued by competent authority, and the writ sufficiently show the object of its issuance.

Art. 11.04 [116] [164] [154] Construction

Every provision relating to the writ of habeas corpus shall be most favorably construed in order to give effect to the remedy, and protect the rights of the person seeking relief under it.

Art. 11.05 [117] [69–84–92–100–165] By whom writ may be granted

The Court of Criminal Appeals, the District Courts, the County Courts, or any Judge of said Courts, have power to issue the writ of habeas corpus; and it is their duty, upon proper motion, to grant the writ under the rules prescribed by law.

Art. 11.06 [118] [166] [156] Returnable to any county

Before indictment found, the writ may be made returnable to any county in the State.

Art. 11.07 [119] [167] [157] Return to certain county; procedure after conviction

After indictment found in any felony case, and before conviction, the writ must be made returnable in the county where the offense has been committed.

After final conviction in any felony case, the writ must be made returnable to the Court of Criminal Appeals of Texas at Austin, Texas. The writ may issue upon the order of any district judge, and said judge may upon presentation to him of a petition for said writ, set the same down for a hearing as to whether the writ should issue, and ascertain the facts, which facts shall be transmitted to the Court of Criminal Appeals with the return of the writ if same is issued after such hearing. Provided further, that should such writ be returned to the Court of Criminal Appeals without the facts accompanying same, or without all the facts deemed necessary by the Court of Criminal Appeals, said court may designate and direct any district judge or judges of this State to ascertain the facts necessary for proper consideration of the issues involved; and it shall be the duty of the official court reporter of the district judge or judges so designated to forthwith prepare a narration of the facts adduced in evidence upon any such hearing and transmit the same to the clerk of the Court of Criminal Appeals within ten days of the date of such hearing. And it shall be the duty of the district clerk of the county wherein the writ is issued to make up a transcript of all pleadings in such case and to transmit the same within ten days to the clerk of the Court of Criminal Appeals. Provided, that upon good cause shown, the time may be extended by the Court of Criminal Appeals for filing of such narration of facts or transcript.

The clerk of the Court of Criminal Appeals shall forthwith docket the cause and same shall be heard by the court at the earliest practicable time. Upon reviewing the record the court shall enter its judgment remanding the petitioner to custody or ordering his release, as the law and facts may justify. The mandate of the court shall issue to the court issuing the writ, as in other criminal cases. After conviction the procedure outlined in this Act shall be exclusive and any other proceeding shall be void and of no force and effect in discharging the prisoner.

Upon any hearing by a district judge by virtue of this Act, the attorney for petitioner, and the State, shall be given at least one full day's notice before such hearing is held.

Art. 11.08 [120] [168] [158] Applicant charged with felony

If a person is confined after indictment on a charge of felony, he may apply to the judge of the court in which he is indicted; or if there be no judge within the district, then to the judge of any district whose residence is nearest to the court house of the county in which the applicant is held in custody.

Art. 11.09 [121] [169] [159] Applicant charged with misdemeanor

If a person is confined on a charge of misdemeanor, he may apply to the county judge of the county in which the misdemeanor is

charged to have been committed, or if there be no county judge in said county, then to the county judge whose residence is nearest to the courthouse of the county in which the applicant is held in custody.

Art. 11.10 [122] [170] [160] Proceedings under the writ

When motion has been made to a judge under the circumstances set forth in the two preceding Articles, he shall appoint a time when he will examine the cause of the applicant, and issue the writ returnable at that time, in the county where the offense is charged in the indictment or information to have been committed. He shall also specify some place in the county where he will hear the motion.

Art. 11.11 [123] [171] [161] Early hearing

The time so appointed shall be the earliest day which the judge can devote to hearing the cause of the applicant.

Art. 11.12 [124] [172] [162] Who may present petition

Either the party for whose relief the writ is intended, or any person for him, may present a petition to the proper authority for the purpose of obtaining relief.

Art. 11.13 [125] [173] [163] Applicant

The word applicant, as used in this Chapter, refers to the person for whose relief the writ is asked, though the petition may be signed and presented by any other person.

Art. 11.14 [126] [174] [164] Requisites of petition

The petition must state substantially:

1. That the person for whose benefit the application is made is illegally restrained in his liberty, and by whom, naming both parties, if their names are known, or if unknown, designating and describing them;

2. When the party is confined or restrained by virtue of any writ, order or process, or under color of either, a copy shall be annexed to the petition, or it shall be stated that a copy cannot be obtained;

3. When the confinement or restraint is not by virtue of any writ, order or process, the petition may state only that the party is illegally confined or restrained in his liberty;

4. There must be a prayer in the petition for the writ of habeas corpus; and

5. Oath must be made that the allegations of the petition are true, according to the belief of the petitioner.

Art. 11.15 [127] [175] [165] Writ granted without delay

The writ of habeas corpus shall be granted without delay by the judge or court receiving the petition, unless it be manifest from the petition itself, or some documents annexed to it, that the party is entitled to no relief whatever.

Art. 11.16 [128] [176] [166] Writ may issue without motion

A judge of the district or county court who has knowledge that any person is illegally confined or restrained in his liberty within his district or county may, if the case be one within his jurisdiction, issue the writ of habeas corpus, without any motion being made for the same.

Art. 11.17 [129] [177] [167] Judge may issue warrant of arrest

Whenever it appears by satisfactory evidence to any judge authorized to issue such writ that any one is held in illegal confinement or custody, and there is good reason to believe that he will be carried out of the State, or suffer some irreparable injury before he can obtain relief in the usual course of law, or whenever the writ of habeas corpus has been issued and disregarded, the said judge may issue a warrant to any peace officer, or to any person specially named by said judge, directing him to take and bring such person before such judge, to be dealt with according to law.

Art. 11.18 [130] [178] [168] May arrest detainer

Where it appears by the proof offered, under circumstances mentioned in the preceding Article, that the person charged with having illegal custody of the prisoner is, by such act, guilty of an offense against the law, the judge may, in the warrant, order that he be arrested and brought before him; and upon examination, he may be committed, discharged, or held to bail, as the law and the nature of the case may require.

Art. 11.19 [131] [179] [169] Proceedings under the warrant

The officer charged with the execution of the warrant shall bring the persons therein mentioned before the judge or court issuing the same, who shall inquire into the cause of the imprisonment or restraint, and make an order thereon, as in cases of habeas corpus, either remanding into custody, discharging or admitting to bail the party so imprisoned or restrained.

Art. 11.20 [132] [180] [170] Officer executing warrant

The same power may be exercised by the officer executing the warrant in cases arising under the foregoing Articles as is exercised in the execution of warrants of arrest.

Art. 11.21 [133] [181] [171] Constructive custody

The words "confined", "imprisoned", "in custody", "confinement", "imprisonment", refer not only to the actual, corporeal and forcible detention of a person, but likewise to any coercive measures by threats, menaces or the fear of injury, whereby one person exercises a control over the person of another, and detains him within certain limits.

Art. 11.22 [134] [182] [172] Restraint

By "restraint" is meant the kind of control which one person exercises over another, not to confine him within certain limits, but to subject him to the general authority and power of the person claiming such right.

Art. 11.23 [135] [183] [173] Scope of writ

The writ of habeas corpus is intended to be applicable to all such cases of confinement and restraint, where there is no lawful right in the person exercising the power, or where, though the power in fact exists, it is exercised in a manner or degree not sanctioned by law.

Art. 11.24 [136] [184] [174] One committed in default of bail

Where a person has been committed to custody for failing to enter into bond, he is entitled to the writ of habeas corpus, if it be stated in the petition that there was no sufficient cause for requiring bail, or that the bail required is excessive. If the proof sustains the petition, it will entitle the party to be discharged, or have the bail reduced.

Art. 11.25 [137] [185] [175] Person afflicted with disease

When a judge or court authorized to grant writs of habeas corpus shall be satisfied, upon investigation, that a person in legal custody is afflicted with a disease which will render a removal necessary for the preservation of life, an order may be made for the removal of the prisoner to some other place where his health will not be likely to suffer; or he may be admitted to bail when it appears that any species of confinement will endanger his life.

Art. 11.26 [138] [186] [176] Who may serve writ

The service of the writ may be made by any person competent to testify.

Art. 11.27 [139] [187] [177] How writ may be served and returned

The writ may be served by delivering a copy of the original to the person who is charged with having the party under restraint or in custody, and exhibiting the original, if demanded; if he refuse to receive it, he shall be informed verbally of the purport of the writ.

If he refuses admittance to the person wishing to make the service, or conceals himself, a copy of the writ may be fixed upon some conspicuous part of the house where such person resides or conceals himself, or of the place where the prisoner is confined; and the person serving the writ of habeas corpus shall, in all cases, state fully, in his return, the manner and the time of the service of the writ.

Art. 11.28 [140] [188] [178] Return under oath

The return of a writ of habeas corpus, under the provisions of the preceding Article, if made by any person other than an officer, shall be under oath.

Art. 11.29 [141] [189] [179] Must make return

The person on whom the writ of habeas corpus is served shall immediately obey the same, and make the return required by law upon the copy of the original writ served on him, and this, whether the writ be directed to him or not.

Art. 11.30 [142] [190] [180] How return is made

The return is made by stating in plain language upon the copy of the writ or some paper connected with it:

1. Whether it is true or not, according to the statement of the petition, that he has in his custody, or under his restraint, the person named or described in such petition;

2. By virtue of what authority, or for what cause, he took and detains such person;

3. If he had such person in his custody or under restraint at any time before the service of the writ, and has transferred him to the custody of another, he shall state particularly to whom, at what time, for what reason or by what authority he made such transfer;

4. He shall annex to his return the writ or warrant, if any, by virtue of which he holds the person in custody; and

5. The return must be signed and sworn to by the person making it.

Art. 11.31 [143] [191] [181] Applicant brought before judge

The person on whom the writ is served shall bring before the judge the person in his custody, or under his restraint, unless it be made to appear that by reason of sickness he cannot be removed; in which case, another day may be appointed by the judge or court for hearing the cause, and for the production of the person confined; or the application may be heard and decided without the production of the person detained, by the consent of his counsel.

Art. 11.32 [144] [192] [182] Custody pending examination

When the return of the writ has been made, and the applicant brought before the court, he is no longer detained on the original warrant or process, but under the authority of the habeas corpus.

The safekeeping of the prisoner, pending the examination or hearing, is entirely under the direction and authority of the judge or court issuing the writ, or to which the return is made. He may be bailed from day to day, or be remanded to the same jail whence he came, or to any other place of safekeeping under the control of the judge or court, till the case is finally determined.

Art. 11.33 [145] [193] [183] Court shall allow time

The court or judge granting the writ of habeas corpus shall allow reasonable time for the production of the person detained in custody.

Art. 11.34 [146] [194] [184] Disobeying writ

When service has been made upon a person charged with the illegal custody of another, if he refuses to obey the writ and make the return required by law, or, if he refuses to receive the writ, or conceals himself, the court or judge issuing the writ shall issue a warrant directed to any officer or other suitable person willing to execute the same, commanding him to arrest the person charged with the illegal custody or detention of another, and bring him before such court or judge. When such person has been arrested and brought before the court or judge, if he still refuses to return the writ, or does not produce the person in his custody, he shall be committed to jail and remain there until he is willing to obey the writ of habeas corpus, and until he pays all the costs of the proceeding.

Art. 11.35 [147] [195] [185] Further penalty for disobeying writ

Any person disobeying the writ of habeas corpus shall also be liable to a civil action at the suit of the party detained, and shall pay in such suit fifty dollars for each day of illegal detention and restraint, after service of the writ. It shall be deemed that a person has disobeyed the writ who detains a prisoner a longer time than three days after service thereof, unless where further time is allowed in the writ for making the return thereto.

Art. 11.36 [148] [196] [186] Applicant may be brought before court

In case of disobedience of the writ of habeas corpus, the person for whose relief it is intended may also be brought before the court or judge having competent authority, by an order for that purpose, issued to any peace officer or other proper person specially named.

Art. 11.37 [149] [197] [187] Death, etc., sufficient return of writ

It is a sufficient return of the writ of habeas corpus that the person, once detained, has died or escaped, or that by some superior force he has been taken from the custody of the person

making the return; but where any such cause shall be assigned, the court or judge shall proceed to hear testimony; and the facts stated in the return shall be proved by satisfactory evidence.

Art. 11.38 [150] [198] [188] When a prisoner dies

When a prisoner confined in jail, or who is in legal custody, shall die, the officer having charge of him shall forthwith report the same to a justice of the peace of the county, who shall hold an inquest to ascertain the cause of his death. All the proceedings had in such cases shall be reduced to writing, certified and returned as in other cases of inquest; a certified copy of which shall be sufficient proof of the death of the prisoner at the hearing of a motion under habeas corpus.

Art. 11.39 [151] [199] [189] Who shall represent the State

If neither the county nor the district attorney be present, the judge may appoint some qualified practicing attorney to represent the State, who shall be paid the same fee allowed district attorneys for like services.

Art. 11.40 [152] [200] [190] Prisoner discharged

The judge or court before whom a person is brought by writ of habeas corpus shall examine the writ and the papers attached to it; and if no legal cause be shown for the imprisonment or restraint, or if it appear that the imprisonment or restraint, though at first legal, cannot for any cause be lawfully prolonged, the applicant shall be discharged.

Art. 11.41 [153] [201] [191] Where party is indicted for capital offense

If it appears by the return and papers attached that the party stands indicted for a capital offense, the judge or court having jurisdiction of the case shall, nevertheless, proceed to hear such testimony as may be offered on the part of the State and the applicant, and may either remand or admit him to bail, as the law and the facts may justify.

Art. 11.42 [154] [202] [192] If court has no jurisdiction

If it appear by the return and papers attached that the judge or court has no jurisdiction, such court or judge shall at once remand the applicant to the person from whose custody he has been taken.

Art. 11.43 [155] [203] [193] Presumption of innocence

No presumption of guilt arises from the mere fact that a criminal accusation has been made before a competent authority.

Art. 11.44 [156] [204] [194] Action of court upon examination

The judge or court, after having examined the return and all documents attached, and heard the testimony offered on both sides, shall, according to the facts and circumstances of the case, proceed either to remand the party into custody, admit him to bail or discharge him; provided, that no defendant shall be discharged after indictment without bail.

Art. 11.45 [157] [205] [195] Void or informal

If it appears that the applicant is detained or held under a warrant of commitment which is informal, or void; yet, if from the document on which the warrant was based, or from the proof on the hearing of the habeas corpus, it appears that there is probable cause to believe that an offense has been committed by the prisoner, he shall not be discharged, but shall be committed or held to bail.

Art. 11.46 [158] [206] [196] If proof shows offense

Where, upon an examination under habeas corpus, it appears to the court or judge that there is probable cause to believe that an offense has been committed by the prisoner, he shall not be discharged, but shall be committed or admitted to bail.

Art. 11.47 [159] [207] [197] May summon magistrate

To ascertain the grounds on which an informal or void warrant has been issued, the judge or court may cause to be summoned the magistrate who issued the warrant, and may, by an order, require him to bring with him all the papers and proceedings touching the matter. The attendance of such magistrate and the production of such papers may be enforced by warrant of arrest.

Art. 11.48 [160] [208] [198] Written issue not necessary

It shall not be necessary, on the trial of any cause arising under habeas corpus, to make up a written issue, though it may be done by the applicant for the writ. He may except to the sufficiency of, or controvert the return or any part thereof, or allege any new matter in avoidance. If written denial on his part be not made, it shall be considered, for the purpose of investigation, that the statements of said return are contested by a denial of the same; and the proof shall be heard accordingly, both for and against the applicant for relief.

Art. 11.49 [161] [209] [199] Order of argument

The applicant shall have the right by himself or counsel to open and conclude the argument upon the trial under habeas corpus.

Art. 11.50 [162] [210] [200] Costs

The judge trying the cause under habeas corpus may make such order as is deemed right concerning the cost of bringing the defendant before him, and all other costs of the proceeding, awarding the same either against the person to whom the writ was directed, the person seeking relief, or may award no costs at all.

Art. 11.51 [163] [211] [201] Record of proceedings

If a writ of habeas corpus be made returnable before a court in session, all the proceedings had shall be entered of record by the clerk thereof, as in any other case in such court. When the motion is heard out of the county where the offense was committed, or in the Court of Criminal Appeals, the clerk shall transmit a certified copy of all the proceedings upon the motion to the clerk of the court which has jurisdiction of the offense.

Art. 11.52 [164] [212] [202] Proceedings had in vacation

If the return is made and the proceedings had before a judge of a court in vacation, he shall cause all of the proceedings to be written, shall certify to the same, and cause them to be filed with the clerk of the court which has jurisdiction of the offense, who shall keep them safely.

Art. 11.53 [165] [213] [203] Construing the two preceding Articles

The two preceding Articles refer only to cases where an applicant is held under accusation for some offense; in all other cases the proceedings had before the judge shall be filed and kept by the clerk of the court hearing the case.

Art. 11.54 [166] [214] [204] Court may grant necessary orders

The court or judge granting a writ of habeas corpus may grant all necessary orders to bring before him the testimony taken before the examining court, and may issue process to enforce the attendance of witnesses.

Art. 11.55 [167] [215] [205] Meaning of "return"

The word "return", as used in this Chapter, means the report made by the officer or person charged with serving the writ of habeas corpus, and also the answer made by the person served with such writ.

Art. 11.56 [168] [216] [206] Effect of discharge before indictment

Where a person, before indictment found against him, has been discharged or held to bail on habeas corpus by order of a court or judge of competent jurisdiction, he shall not be again imprisoned or detained in custody on an accusation for the same offense, until after he shall have been indicted, unless surrendered by his bail.

Art. 11.57 [169] [217] [207] Writ after indictment

Where a person once discharged or admitted to bail is afterward indicted for the same offense for which he has been once arrested, he may be committed on the indictment, but shall be again entitled to the writ of habeas corpus, and may be admitted to bail, if the facts of the case render it proper; but in cases where, after indictment is found, the cause of the defendant has been investigated on habeas corpus, and an order made, either remanding him to custody, or admitting him to bail, he shall neither be subject to be again placed in custody, unless when surrendered by his bail, nor shall he be again entitled to the writ of habeas corpus, except in the special cases mentioned in this Chapter.

Art. 11.58 [170] [218] [208] Person committed for a capital offense

If the accusation against the defendant for a capital offense has been heard on habeas corpus before indictment found, and he shall have been committed after such examination, he shall not be entitled to the writ, unless in the special cases mentioned in Articles 11.25 and 11.59.

Art. 11.59 [171] [219] [209] Obtaining writ a second time

A party may obtain the writ of habeas corpus a second time by stating in a motion therefor that since the hearing of his first motion important testimony has been obtained which it was not in his power to produce at the former hearing. He shall also set forth the testimony so newly discovered; and if it be that of a witness, the affidavit of the witness shall also accompany such motion.

Art. 11.60 [172] [220] [210] Refusing to execute writ

Any officer to whom a writ of habeas corpus, or other writ, warrant or process authorized by this Chapter shall be directed, delivered or tendered, who refuses to execute the same according to his directions, or who wantonly delays the service or execution of the same, shall be liable to fine as for contempt of court.

Art. 11.61 [173] [221] [211] Refusal to obey writ

Any one having another in his custody, or under his power, control or restraint who refuses to obey a writ of habeas corpus, or who evades the service of the same, or places the person illegally detained under the control of another, removes him, or in any other manner attempts to evade the operation of the writ, shall be dealt with as provided in Article 11.34 of this Code.

Art. 11.62 [174] [222] [212] Refusal to give copy of process

Any jailer, sheriff or other officer who has a prisoner in his custody and refuses, upon demand, to furnish a copy of the process under which he holds the person, is guilty of an offense, and shall be dealt

with as provided in Article 11.34 of this Code for refusal to return the writ therein required.

Art. 11.63 [175] [223] [213] Held under Federal authority

No person shall be discharged under the writ of habeas corpus who is in custody by virtue of a commitment for any offense exclusively cognizable by the courts of the United States, or by order or process issuing out of such courts in cases where they have jurisdiction, or who is held by virtue of any legal engagement or enlistment in the army, or who, being rightfully subject to the rules and articles of war, is confined by any one legally acting under the authority thereof, or who is held as a prisoner of war under the authority of the United States.

Art. 11.64 [176] [224] [214] Application of Chapter

This Chapter applies to all cases of habeas corpus for the enlargement of persons illegally held in custody or in any manner restrained in their personal liberty, for the admission of prisoners to bail, and for the discharge of prisoners before indictment upon a hearing of the testimony. Instead of a writ of habeas corpus in other cases heretofore used, a simple order shall be substituted.

LIMITATION AND VENUE

CHAPTER TWELVE

LIMITATION

Art.
12.01 Treason; theft or conversion by executor, administrator or guardian; forgery.
12.02 Rape.
12.03 Theft, etc., five years.
12.04 Other felonies.
12.05 Misdemeanors, two years.
12.06 Computation.
12.07 Absence from State and time of pendency of indictment, etc., not computed.
12.08 An indictment is "presented," when.
12.09 An information is "presented," when.

Article 12.01 [177] [225] [215] Treason; theft or conversion by executor, administrator or guardian; forgery

An indictment for the following offenses may be presented within ten years from the time of the commission of the offense, and not afterward:

1. treason;

2. theft or conversion of any estate, real, personal or mixed, by an executor, administrator, guardian or trustee, with intent to defraud any creditor, heir, legatee, ward, distributee, beneficiary or settlor of a trust interested in such estate;

3. forgery or the uttering, using or passing of forged instruments.

Art. 12.02 [178] [226] [216] Rape

An indictment for rape may be presented within one year, and not afterward.

Art. 12.03 [179] [227] [217] Theft, etc., five years

An indictment for felony theft, arson, burglary, robbery and counterfeiting may be presented within five years, and not afterward.

Art. 12.04 [180] [228] [218] Other felonies

An indictment for any other felony may be presented within three years from the commission of the offense, and not afterward; except murder, for which an indictment may be presented at any time.

Art. 12.05 [181] [229] [219] Misdemeanors, two years

An indictment or information for any misdemeanor may be presented within two years from the commission of the offense, and not afterward.

Art. 12.06 [182] [230] [220] Computation

The day on which the offense was committed and the day on which the indictment or information is presented shall be excluded from the computation of time.

Art. 12.07 [183] [231] [221] Absence from State and time of pendency of indictment, etc., not computed

1. The time during which the accused is absent from the State shall not be computed in the period of limitation.

2. The time during the pendency of an indictment, information, or complaint shall not be computed in the period of limitation.

3. The term "during the pendency," as used herein, means that period of time beginning with the day the indictment, information, or complaint is filed in a court of competent jurisdiction, and ending with the day such accusation is, by an order of a trial court having jurisdiction thereof, determined to be invalid for any reason.

Art. 12.08 [184] [232] [222] An indictment is "presented," when

An indictment is considered as "presented," when it has been duly acted upon by the grand jury and received by the court.

Art. 12.09 [185] [233] [223] An information is "presented," when

An information is considered as "presented," when it has been filed by the proper officer in the proper court.

CHAPTER THIRTEEN

VENUE

Art.
13.01 Offenses not committed in the State.
13.02 Forgery.
13.03 Counterfeiting.
13.04 Perjury or false swearing.
13.05 On the boundary of two counties.
13.06 Person dying out of the State.
13.07 Person within the State inflicting injury on another out of the State.

Art.
13.08 Person without the State inflicting an injury on one within.
13.09 Committed on a boundary stream.
13.10 Injured in one county and dying in another.
13.11 Committed on a boundary.
13.12 Theft.
13.13 Mortgaged property.
13.14 Accomplices and accessories to theft.
13.15 Receiving and concealing stolen property.
13.16 By commissioner of deeds.
13.17 On vessels.
13.18 Embezzlement.
13.19 False imprisonment, kidnapping and abduction.
13.20 Conspiracy.
13.21 Bigamy.
13.22 Rape.
13.23 Conviction or acquittal in another State.
13.24 Jurisdiction in different counties.
13.25 Proof of venue.
13.26 Other offenses.

Article 13.01 [186] [234] [224] Offenses not committed in the State

Prosecutions for offenses committed wholly or in part without, and made punishable by law within this State, may be begun and carried on in any county in which the offender is found.

Art. 13.02 [187] [235] [225] Forgery

Forgery may be prosecuted in any county where the written instrument was forged, or where the same was used or passed, or attempted to be used or passed, or deposited or placed with another person, firm, association, or corporation either for collection or credit for the account of any person, firm, association or corporation. All forging and uttering, using or passing of forged instruments in writing which concern or affect the title to land in this State may be prosecuted in Travis County, or in the county in which such land, or any part thereof, is situated.

Art. 13.03 [188] [236] [226] Counterfeiting

Counterfeiting may be prosecuted in any county where the offense was committed, or where the counterfeit coin was passed, or attempted to be passed.

Art. 13.04 [189] [237] [227] Perjury and false swearing

Perjury and false swearing may be prosecuted in the county where committed, or in the county where the false statement is used or attempted to be used.

Art. 13.05 [190] [238] [228] On the boundary of two counties

An offense committed on the boundary of any two counties, or within four hundred yards thereof, may be prosecuted and punished in either county.

Art. 13.06 [191] [239] [229] Person dying out of the State

If any person, being at the time within this State, shall inflict upon another, also within this State, an injury of which such person afterward dies without the limits of this State, the person so offending shall be liable to prosecution in the county where the injury was inflicted.

Art. 13.07 [192] [240] [230] Person within the State inflicting injury on another out of the State

If a person, being at the time within this State, shall inflict upon another out of this State an injury by reason of which the injured person dies without the limits of this State, he may be prosecuted in the county where he was when the injury was inflicted.

Art. 13.08 [193] [241] [231] Person without the State inflicting an injury on one within

If a person, being at the time without this State, shall inflict upon another who is at the time within this State, an injury causing death, he may be prosecuted in the county where the person injured dies.

Art. 13.09 [194] [242] [232] Committed on a boundary stream

If an offense be committed upon any river or stream, the boundary of this State, it may be prosecuted in the county the boundary of which is upon such stream or river, and the county seat of which is nearest the place where the offense was committed.

Art. 13.10 [195] [243] [233] Injured in one county and dying in another

If a person receives an injury in one county and dies in another by reason of such injury, the offender may be prosecuted in the county where the injury was received or where the death occurred, or in the county where the dead body is found.

Art. 13.11 [196] [244] [234] Committed on a boundary

Where a river or other stream or highway is the boundary between two counties, any offense committed on such river, stream or highway at a place where it is such boundary, is punishable in either county.

Art. 13.12 [197] [245] [235] Theft

Where property is stolen in one county and carried off by the offender to another, he may be prosecuted either in the county where he took the property or in any other county through or into which he may have carried it.

Art. 13.13 [198] [246] Mortgaged property

When mortgaged property is taken from one county and unlawfully disposed of in another county, the offender may be prosecuted either in the county in which such property was disposed of, or in the county from which it was removed, or in which the lien on it is registered.

Art. 13.14 [199] [247] [236] Accomplices and accessories to theft

Accomplices and accessories to theft may be prosecuted in any county where the theft was committed, or in any other county through or into which the property may be carried by either the principal, accomplice, or accessory to the offense.

Art. 13.15 [200] [248] [237] Receiving and concealing stolen property

Receiving and concealing stolen property may be prosecuted in the county where the theft was committed, or in any other county through or into which the property may have been carried by the person stealing the same, or in any county where the same may have been received or concealed by the offender.

Art. 13.16 [201] 249] [238] By commissioner of deeds

Offenses committed out of this State by a commissioner of deeds, or other officer acting under the authority of this State, may be prosecuted in any county of this State.

Art. 13.17 [202] [250] [239] On vessels

An offense committed on board a vessel which is at the time upon any navigable water within the boundaries of this State, may be prosecuted in any county through which the vessel is navigated in the course of her voyage, or in the county where the voyage commences or terminates.

Art. 13.18 [203] [251] [240] Embezzlement

Embezzlement may be prosecuted in any county in which the offender may have taken or received the property, or through or into which he may have undertaken to transport it.

Art. 13.19 [204] [252] [241] False imprisonment, kidnapping and abduction

Venue for false imprisonment, kidnapping and abduction belongs either to the county in which the offense was committed, or to any county through, into or out of which the person falsely imprisoned, kidnapped or taken in such manner as to constitute abduction may have been carried.

Art. 13.20 [205] [253] [242] Conspiracy

Conspiracy may be prosecuted in the county where the conspiracy was entered into, or in the county where the same was agreed to be executed; and when the conspiracy is entered into in another State, territory or country, to commit an offense in this State, the offense may be prosecuted in the county where such offense was agreed to be committed, or in any county where any one of the conspirators may be found, or in Travis County.

Art. 13.21 [206] Bigamy

Bigamy may be prosecuted in the county where the bigamous marriage occurred or in any county in this State in which the parties to such bigamous marriage may live or cohabit together as man and wife.

Art. 13.22 [207] [254] Rape

Rape may be prosecuted in the county in which it is committed, or in any county of the judicial district in which it is committed, or in any county of the judicial district the judge of which resides nearest the county seat of the county in which the offense is committed. When the judicial district comprises only one county, prosecutions may be commenced and carried on in that county, if the offense be committed there, or in any adjoining county. When it shall come to the knowledge of any district judge whose court has jurisdiction under this Article that rape has probably been committed, he shall immediately, if his court be in session, and if not in session, then, at the first term thereafter in any county of the district, call the attention of the grand jury thereto; and if his court be in session, but the grand jury has been discharged, he shall immediately recall said grand jury to investigate the accusation. Prosecution for rape shall take precedence in all cases in all courts; and the district courts are authorized and directed to change the venue in such cases whenever it shall be necessary to secure a speedy trial.

Art. 13.23 [208] [255] [243] Conviction or acquittal in another State

When an act has been committed out of this State by an inhabitant thereof, and such act is an offense by the laws of this State, and is also an offense by the laws of the place where the same was done, a conviction or acquittal of the offender, under the laws of the place where the offense was committed, is a bar to the prosecution in this State.

Art. 13.24 [209] [256] [244]* Jurisdiction in different counties

Where different counties have jurisdiction of the same offense, conviction or acquittal of the offense in one county is a bar to any further prosecution in any other county.

Art. 13.25 [210] [257] [245] Proof of venue

In all cases mentioned in this Chapter, the indictment or information, or any proceeding in the case, may allege that the offense was committed in the county where the prosecution is carried on. To sustain the allegation of venue, it shall only be necessary to prove that by reason of the facts in the case, the county where such prosecution is carried on has jurisdiction.

Art. 13.26 [211] [258] [246] Other offenses

If venue is not specifically stated, the proper county for the prosecution of offenses is that in which the offense was committed.

ARREST, COMMITMENT AND BAIL

CHAPTER FOURTEEN

ARREST WITHOUT WARRANT

Art.
14.01 Offense within view.
14.02 Within view of magistrate.
14.03 Authority of municipality.
14.04 When felony has been committed.
14.05 Rights of officer.
14.06 Must take offender before magistrate.

Article 14.01 [212] [259] [247] Offense within view

A peace officer or any other person, may, without warrant, arrest an offender when the offense is committed in his presence or within his view, if the offense is one classed as a felony, or as an offense against the public peace.

Art. 14.02 [213] [260] [248] Within view of magistrate

A peace officer may arrest, without warrant, when a felony or breach of the peace has been committed in the presence or within the view of a magistrate, and such magistrate verbally orders the arrest of the offender.

Art. 14.03 [214] [261] [249] Authority of municipality

The municipal authorities of towns and cities may establish rules authorizing the arrest, without warrant, of persons found in suspicious places, and under circumstances which reasonably show that such persons have been guilty of some felony or breach of the peace, or threaten, or are about to commit some offense against the laws.

Art. 14.04 [215] [262] [250] When felony has been committed

Where it is shown by satisfactory proof to a peace officer, upon the representation of a credible person, that a felony has been committed, and that the offender is about to escape, so that there is no time to procure a warrant, such peace officer may, without warrant, pursue and arrest the accused.

Art. 14.05 [216] [263] [251] Rights of officer

In each case enumerated where arrests may be lawfully made without warrant, the officer or person making the arrest is justified in adopting all the measures which he might adopt in cases of arrest under warrant.

Art. 14.06 [217] [264] [252] Must take offender before magistrate

In each case enumerated in this Code, the person making the arrest shall immediately take the person arrested before the magistrate who may have ordered the arrest or before some magistrate of the county where the arrest was made without an order. The magistrate shall immediately perform the duties described in Article 15.17 of this Code.

CHAPTER FIFTEEN

ARREST UNDER WARRANT

Art.
15.01 Warrant of arrest.
15.02 Requisites of warrant.
15.03 Magistrate may issue warrant or summons.
15.04 Complaint.
15.05 Requisites of complaint.
15.06 Warrant extends to every part of the State.
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15.15 Private person executing warrant.
15.16 How warrant is executed.
15.17 Duties of arresting officer and magistrate.
15.18 Arrest for out-of-county offense.
15.19 Notice of arrest.
15.20 Duty of sheriff receiving notice.
15.21 Prisoner discharged if not timely demanded.
15.22 When a person is arrested.
15.23 Time of arrest.
15.24 What force may be used.
15.25 May break door.
15.26 Authority to arrest must be made known.
15.27 Escaped prisoner.

Article 15.01 [218] [265] [253] Warrant of arrest

A "warrant of arrest" is a written order from a magistrate, directed to a peace officer or some other person specially named, commanding him to take the body of the person accused of an offense, to be dealt with according to law.

Art. 15.02 [219] [266] [254] Requisites of warrant

It issues in the name of "The State of Texas", and shall be sufficient, without regard to form, if it have these substantial requisites:

1. It must specify the name of the person whose arrest is ordered, if it be known, if unknown, then some reasonably definite description must be given of him.

2. It must state that the person is accused of some offense against the laws of the State, naming the offense.

3. It must be signed by the magistrate, and his office be named in the body of the warrant, or in connection with his signature.

Art. 15.03 [220] [267] [255] Magistrate may issue warrant or summons

(a) A magistrate may issue a warrant of arrest or a summons:

1. In any case in which he is by law authorized to order verbally the arrest of an offender;

2. When any person shall make oath before the magistrate that another has committed some offense against the laws of the State; and

3. In any case named in this Code where he is specially authorized to issue warrants of arrest.

(b) A summons may be issued in any case where a warrant may be issued, and shall be in the same form as the warrant except that it shall summon the defendant to appear before a magistrate at a stated time and place. The summons shall be served upon a defendant by delivering a copy to him personally, or by leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by mailing it to the defendant's last known address. If a defendant fails to appear in response to the summons a warrant shall be issued.

Art. 15.04 [221] [268] [256] Complaint

The affidavit made before the magistrate or district or county attorney is called a "complaint" if it charges the commission of an offense.

Art. 15.05 [222] [269] [257] Requisites of complaint

The complaint shall be sufficient, without regard to form, if it have these substantial requisites:

1. It must state the name of the accused, if known, and if not known, must give some reasonably definite description of him.

2. It must show that the accused has committed some offense against the laws of the State, either directly or that the affiant has good reason to believe, and does believe, that the accused has committed such offense.

3. It must state the time and place of the commission of the offense, as definitely as can be done by the affiant.

4. It must be signed by the affiant by writing his name or affixing his mark.

Art. 15.06 [223] [270] [258] Warrant extends to every part of the State

A warrant of arrest, issued by any county or district clerk, or by any magistrate (except mayors or recorders of an incorporated city or town), shall extend to any part of the State; and any peace officer to whom said warrant is directed, or into whose hands the same has been transferred, shall be authorized to execute the same in any county in this State.

Art. 15.07 [224] [271] [259] Warrant issued by other magistrate

When a warrant of arrest is issued by any mayor or recorder of an incorporated city or town, it cannot be executed in another county than the one in which it issues, except:

1. It be endorsed by a judge of a court of record, in which case it may be executed anywhere in the State; or

2. If it be endorsed by any magistrate in the county in which the accused is found, it may be executed in such county. The endorsement may be: "Let this warrant be executed in the county of .....". Or, if the endorsement is made by a judge of a court of record, then the endorsement may be: "Let this warrant be executed in any county of the State of Texas". Any other words of the same meaning will be sufficient. The endorsement shall be dated, and signed officially by the magistrate making it.

Art. 15.08 [225] [272] [260] Warrant may be telegraphed

A warrant of arrest may be forwarded by telegraph from any telegraph office to another in this State. If issued by any magistrate named in Article 15.06, the peace officer receiving the same shall execute it without delay. If it be issued by any other magistrate than is named in Article 15.06, the peace officer receiving the same shall proceed with it to the nearest magistrate of his county, who shall endorse thereon, in substance, these words:

"Let this warrant be executed in the county of .....", which endorsement shall be dated and signed officially by the magistrate making the same.

Art. 15.09 [226] [273] [261] Complaint by telegraph

A complaint in accordance with Article 15.05, may be telegraphed, as provided in the preceding Article, to any magistrate in the State; and the magistrate who receives the same shall forthwith issue a warrant for the arrest of the accused; and the accused, when arrested, shall be dealt with as provided in this Chapter in similar cases.

Art. 15.10 [227] [274] [262] Copy to be deposited

A certified copy of the original warrant or complaint, certified to by the magistrate issuing or taking the same, shall be deposited with the manager of the telegraph office from which the same is to be forwarded, taking precedence over other business, to the place of its destination or to the telegraph office nearest thereto, precisely as it is written, including the certificate of the seal attached.

Art. 15.11 [228] [275] [263] Duty of telegraph manager

When a warrant or complaint is received at a telegraph office for delivery, it shall be delivered to the party to whom it is addressed as soon as practicable, written on the proper blanks of the telegraph company and certified to by the manager of the telegraph office as being a true and correct copy of the warrant or complaint received at his office.

Art. 15.12 [229] [276] [264] Warrant or complaint must be under seal

No manager of a telegraph office shall receive and forward a warrant or complaint unless the same shall be certified to under the seal of a court of record or by a justice of the peace, with the certificate under seal of the district or county clerk of his county that he is a legally qualified justice of the peace of such county; nor shall it be lawful for any magistrate to endorse a warrant received by telegraph, or issue a warrant upon a complaint received by telegraph, unless all the requirements of the law in relation thereto have been fully complied with.

Art. 15.13 [230] [277] [265] Telegram prepaid

Whoever presents a warrant or complaint to the manager of a telegraph office to be forwarded by telegraph, shall pay for the same in advance, unless, by the rules of the company, it may be sent collect.

Art. 15.14 [231] [278] [266] Warrant may be directed to any person

If it is made known by satisfactory proof to the magistrate that a peace officer cannot be procured to execute a warrant of arrest, or that such delay will be occasioned in procuring the services of a peace officer that the accused will probably escape, such warrant may be directed to any suitable person who is willing to execute the same; and in such case, his name shall be set forth in the warrant.

Art. 15.15 [232] [279] [267] Private person executing warrant

No person other than a peace officer can be compelled to execute a warrant of arrest; but if any person shall undertake its execution, he shall be bound to do so under all the penalties to which a peace

officer would be liable. He has the same rights, and is governed by the same rules as apply to peace officers.

Art. 15.16 [233] [280] [268] How warrant is executed

The officer or person executing a warrant of arrest shall immediately take the person before the magistrate who issued the warrant or before the magistrate named in the warrant, if the magistrate is in the same county where the person is arrested. If the issuing or named magistrate is in another county, the person arrested shall immediately be taken before some magistrate in the county in which he was arrested.

Art. 15.17 Duties of arresting officer and magistrate

In each case enumerated in this Code, the person making the arrest shall immediately take the person arrested before some magistrate of the county where the accused was arrested. The magistrate shall inform the person arrested of the accusation against him and of any affidavit filed therewith, of his right to retain counsel, of his right to request the appointment of counsel if he is unable to obtain counsel, and of his right to have an examining trial. He shall also inform the person arrested that he is not required to make a statement and that any statement made by him may be used against him. The magistrate shall allow the person arrested reasonable time and opportunity to consult counsel and shall admit the person arrested to bail if allowed by law.

Art. 15.18 [235] [282] [270] Arrest for out-of-county offense

One arrested under a warrant issued in a county other than the one in which the person is arrested shall be taken before a magistrate of the county where the arrest takes place who shall take bail, if allowed by law, and immediately transmit the bond taken to the court having jurisdiction of the offense.

Art. 15.19 [236] [283] [271] Notice of arrest

If the accused fails or refuses to give bail, as provided in the preceding Article, he shall be committed to the jail of the county where he was arrested; and the magistrate committing him shall immediately notify the sheriff of the county in which the offense is alleged to have been committed of the arrest and commitment, which notice may be given by telegraph, by mail or by other written notice.

Art. 15.20 [237] [284] [272] Duty of sheriff receiving notice

The sheriff receiving the notice shall forthwith go or send for the prisoner and have him brought before the proper court or magistrate.

Art. 15.21 [238] [285] [273] Prisoner discharged if not timely demanded

If the proper officer of the county where the offense is alleged to have been committed does not demand the prisoner and take charge of him within ten days from the day he is committed, such prisoner shall be discharged from custody.

Art. 15.22 [239] [286] [274] When a person is arrested

A person is arrested when he has been actually placed under restraint or taken into custody by an officer or person executing a warrant of arrest, or by an officer or person arresting without a warrant.

Art. 15.23 [240] [287] [275] Time of arrest

An arrest may be made on any day or at any time of the day or night.

Art. 15.24 [241] [288] [276] What force may be used

In making an arrest, all reasonable means are permitted to be used to effect it. No greater force, however, shall be resorted to than is necessary to secure the arrest and detention of the accused.

Art. 15.25 [242] [289] [277] May break door

In case of felony, the officer may break down the door of any house for the purpose of making an arrest, if he be refused admittance after giving notice of his authority and purpose.

Art. 15.26 [243] [290] [278] Authority to arrest must be made known

In executing a warrant of arrest, it shall always be made known to the accused under what authority the arrest is made; and if requested, the warrant shall be exhibited to him.

Art. 15.27 [244] [291] [279] Escaped prisoner

If a person arrested shall escape, or be rescued, he may be retaken without any other warrant; and for this purpose, all the means may be used which are authorized in making the arrest in the first instance.

CHAPTER SIXTEEN

THE COMMITMENT OR DISCHARGE OF THE ACCUSED

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Article 16.01 [245] [292] [280] Examining trial

When the accused has been brought before a magistrate for an examining trial that officer shall proceed to examine into the truth of the accusation made, allowing the accused, however, sufficient time to procure counsel. In a proper case, the magistrate may appoint counsel to represent an accused in such examining trial only, to be compensated as otherwise provided in this Code. The accused in any felony case shall have the right to an examining trial before indictment in the county having jurisdiction of the offense, whether he be in custody or on bail, at which time the magistrate at the hearing shall determine the amount or sufficiency of bail, if a bailable case.

Art. 16.02 [246] [293] [281] Examination postponed

The magistrate may at the request of either party postpone the examination to procure testimony; but the accused shall in the meanwhile be detained in custody unless he give bail to be present from day to day before the magistrate until the examination is concluded, which he may do in all cases except murder and treason.

Art. 16.03 [247] [294] [282] Warning to accused

Before the examination of the witnesses, the magistrate shall inform the accused that it is his right to make a statement relative to the accusation brought against him, but at the same time shall also inform him that he cannot be compelled to make any statement whatever, and that if he does make such statement, it may be used in evidence against him.

Art. 16.04 [248] [295] [283] Voluntary statement

If the accused desires to make a voluntary statement, he may do so before the examination of any witness, but not afterward. His statement shall be reduced to writing by or under the direction of the magistrate, or by the accused or his counsel, and shall be signed by the accused by affixing his name or mark, but shall not be sworn to by him. The magistrate shall attest by his own certificate and signature to the execution and signing of the statement.

Art. 16.05 [249] [296] [284] Witness placed under rule

The magistrate shall, if requested by the accused or his counsel, or by the prosecutor, have all the witnesses placed in charge of an officer, so that the testimony given by any one witness shall not be heard by any of the others.

Art. 16.06 [250] [297] [285] Counsel may examine witness

The counsel for the State, and the accused or his counsel may question the witnesses on direct or cross examination. If no counsel appears for the State the magistrate may examine the witnesses.

Art. 16.07 [251] [298] [286] Same rules of evidence as on final trial

The same rules of evidence shall apply to and govern a trial before an examining court that apply to and govern a final trial.

Art. 16.08 [252] [299] [287] Presence of the accused

The examination of each witness shall be in the presence of the accused.

Art. 16.09 [253] [300] [288] Testimony reduced to writing

The testimony of each witness shall be reduced to writing by or under the direction of the magistrate, and shall then be read over to the witness, or he may read it over himself. Such corrections shall be made in the same as the witness may direct; and he shall then sign the same by affixing thereto his name or mark. All the testimony thus taken shall be certified to by the magistrate. In lieu of the above provision, a statement of facts authenticated by State and defense counsel and approved by the presiding magistrate may be used to preserve the testimony of witnesses.

Art. 16.10 [254] [301] [289] Attachment for witness

The magistrate has the power in all cases, where a witness resides or is in the county where the prosecution is pending, to issue an attachment for the purpose of enforcing the attendance of such witness; this he may do without having previously issued a subpoena for that purpose.

Art. 16.11 [255] [302] [290] Attachment to another county

The magistrate may issue an attachment for a witness to any county in the State, when affidavit is made by the party applying therefor that the testimony of the witness is material to the prosecution, or the defense, as the case may be; and the affidavit shall further state the facts which it is expected will be proved by the witness; and if the facts set forth are not considered material by the magistrate, or if they be admitted to be true by the adverse party, the attachment shall not issue.

Art. 16.12 [256] [303] [291] Witness need not be tendered his witness fees or expenses

A witness attached need not be tendered his witness fees or expenses.

Art. 16.13 [257] [304] [292] Attachment executed forthwith

The officer receiving the attachment shall execute it forthwith by bringing before the magistrate the witness named therein, unless such witness shall give bail for his appearance before the magistrate at the time and place required by the writ.

Art. 16.14 [258] [305] [293] Postponing examination

After examining the witness in attendance, if it appear to the magistrate that there is other important testimony which may be had by a postponement, he shall, at the request of the prosecutor or of the defendant, postpone the hearing for a reasonable time to enable such testimony to be procured; but in such case the accused shall remain in the custody of the proper officer until the day fixed for such further examination. No postponement shall take place, unless a sworn statement be made by the defendant, or the prosecutor, setting forth the name and residence of the witness, and the facts which it is expected will be proved. If it be testimony other than that of a witness, the statement made shall set forth the nature of the evidence. If the magistrate is satisfied that the testimony is not material, or if the same be admitted to be true by the adverse party, the postponement shall be refused.

Art. 16.15 [259] [306] [294] Who may discharge capital offense

The examination of one accused of a capital offense shall be conducted by a justice of the peace, county judge, county court at law, or

county criminal court. The judge may admit to bail, except in capital cases where the proof is evident.

Art. 16.16 [260] [307] [295] If insufficient bail has been taken

Where it is made to appear by affidavit to a judge of the Court of Criminal Appeals, district or county court, that the bail taken in any case is insufficient in amount, or that the sureties are not good for the amount, or that the bond is for any reason defective or insufficient, such judge shall issue a warrant of arrest, and require of the defendant sufficient bond and security, according to the nature of the case.

Art. 16.17 [261] [308] [296] Decision of judge

After the examining trial has been had, the judge shall make an order committing the defendant to the jail of the proper county, discharging him or admitting him to bail, as the law and facts of the case may require. Failure of the judge to make or enter an order within 48 hours after the examining trial has been completed operates as a finding of no probable cause and the accused shall be discharged.

Art. 16.18 [262] [309] [297] When no safe jail

If there is no safe jail in the county in which the prosecution is carried on, the magistrate may commit defendant to the nearest safe jail in any other county.

Art. 16.19 [263] [310] [298] Warrant in such case

The commitment in the case mentioned in the preceding Article shall be directed to the sheriff of the county to which the defendant is sent, but the sheriff of the county from which the defendant is taken shall be required to deliver the prisoner into the hands of the sheriff to whom he is sent.

Art. 16.20 [264] [311] [299] "Commitment"

A "commitment" is an order signed by the proper magistrate directing a sheriff to receive and place in jail the person so committed. It will be sufficient if it have the following requisites:

1. That it run in the name of "The State of Texas";

2. That it be addressed to the sheriff of the county to the jail of which the defendant is committed;

3. That it state in plain language the offense for which the defendant is committed, and give his name, if it be known, or if unknown, contain an accurate description of the defendant;

4. That it state to what court and at what time the defendant is to be held to answer;

5. When the prisoner is sent out of the county where the prosecution arose, the warrant of commitment shall state that there is no safe jail in the proper county; and

6. If bail has been granted, the amount of bail shall be stated in the warrant of commitment.

Art. 16.21 [265] [313] [301] Duty of sheriff as to prisoners

Every sheriff shall keep safely a person committed to his custody. He shall use no cruel or unusual means to secure this end, but shall adopt all necessary measures to prevent the escape of a prisoner. He may summon a guard of sufficient number, in case it becomes necessary to prevent an escape from jail, or the rescue of a prisoner.

CHAPTER SEVENTEEN

BAIL

Art.

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Article 17.01 [267] [315] [303] Definition of "bail"

"Bail" is the security given by the accused that he will appear and answer before the proper court the accusation brought against him, and includes a bail bond or a personal bond.

Art. 17.02 [269] [317] [305] Definition of "bail bond"

A "bail bond" is a written undertaking entered into by the defendant and his sureties for the appearance of the principal therein before some court or magistrate to answer a criminal accusation; provided, however, that the defendant upon execution of such bail bond may deposit with the custodian of funds of the court in which the prosecution is pending current money of the United States in the amount of the bond in lieu of having sureties signing the same. Any cash funds deposited under this Article shall be receipted for by the officer receiving the same and shall be refunded to the defendant if and when the defendant complies with the conditions of his bond, and upon order of the court.

Art. 17.03 Personal bond

The court before whom the case is pending may, in its discretion, release the defendant on his personal bond without sureties or other security.

Art. 17.04 Requisites of a personal bond

A personal bond is sufficient if it includes the requisites of a bail bond as set out in Article 17.08, except that no sureties are required. In addition, a personal bond shall contain the defendant's name, address and place of employment, and the following oath sworn and signed by the defendant:

"I swear that I will appear before (the court or magistrate) at (address, city, county) Texas, on the (date), at the hour of (time, a. m. or p. m.) or upon notice by the court, or pay to the court the principal sum of (amount) plus all necessary and reasonable expenses incurred in any arrest for failure to appear."

Art. 17.05 [270] [318] [306] When a bail bond is given

A bail bond is entered into either before a magistrate, upon an examination of a criminal accusation, or before a judge upon an application under habeas corpus; or it is taken from the defendant by a peace officer who has a warrant of arrest or commitment.

Art. 17.06 [271a] Corporation as surety

Wherever in this Chapter, any person is required or authorized to give or execute any bail bond, such bail bond may be given or executed by such principal and any corporation authorized by law to act as surety, subject to all the provisions of this Chapter regulating and governing the giving of bail bonds by personal surety insofar as the same is applicable.

Art. 17.07 [271b] Corporation to file with county clerk power of attorney designating agent

Any corporation authorized by the law of this State to act as a surety, shall before executing any bail bond as authorized in the preceding Article, first file in the office of the county clerk of the county where such bail bond is given, a power of attorney designating and authorizing the named agent, agents or attorney of such corporation to execute such bail bonds and thereafter the execution of such bail bonds by such agent, agents or attorney, shall be a valid and binding obligation of such corporation.

Art. 17.08 [273] [321] [309] Requisites of a bail bond

A bail bond shall be sufficient if it contain the following requisites:

1. That it be made payable to "The State of Texas";

2. That the defendant and his sureties, if any, bind themselves that the defendant will appear before the proper court or magistrate to answer the accusation against him;

3. If the defendant is charged with a felony, that it state that he is charged with a felony. If the defendant is charged with a misdemeanor, that it state that he is charged with a misdemeanor;

4. That the bond be signed by name or mark by the principal and sureties, if any, each of whom shall write thereon his mailing address;

5. That the bond state the time and place, when and where the accused binds himself to appear, and the court or magistrate before whom he is to appear. The bond shall also bind the defendant to appear before any court or magistrate before whom the cause may thereafter be pending at any time when, and place where, his presence may be required under this Code or by any court or magistrate;

6. The bond shall also be conditioned that the principal and sureties, if any, will pay all necessary and reasonable expenses incurred by any and all sheriffs or other peace officers in rearresting the principal in the event he fails to appear before the court or magistrate named in the bond at the time stated therein. The amount of such expense shall be in addition to the principal amount specified in the bond. The failure of any bail bond to contain the conditions specified in this paragraph shall in no manner affect the legality of any such bond, but it is intended that the sheriff or other peace officer shall look to the defendant and his sureties, if any, for expenses incurred by him, and not to the State for any fees earned by him in connection

with the rearresting of an accused who has violated the conditions of his bond.

Art. 17.09 [275a] Duration; original and subsequent proceedings; new bail

Sec. 1. Where a defendant, in the course of a criminal action, gives bail before any court or person authorized by law to take same, for his personal appearance before a court or magistrate, to answer a charge against him, the said bond shall be valid and binding upon the defendant and his sureties, if any, thereon, for the defendant's personal appearance before the court or magistrate designated therein, as well as before any other court to which same may be transferred, and for any and all subsequent proceedings had relative to the charge, and each such bond shall be so conditioned except as hereinafter provided.

Sec. 2. When a defendant has once given bail for his appearance in answer to a criminal charge, he shall not be required to give another bond in the course of the same criminal action except as herein provided.

Sec. 3. Provided that whenever, during the course of the action, the judge or magistrate in whose court such action is pending finds that the bond is defective, excessive or insufficient in amount, or that the sureties, if any, are not acceptable, or for any other good and sufficient cause, such judge or magistrate may, either in term-time or in vacation, order the accused to be rearrested, and require the accused to give another bond in such amount as the judge or magistrate may deem proper. When such bond is so given and approved, the defendant shall be released from custody.

Art. 17.10 [276] [324] [312] Disqualified sureties

A minor cannot be surety on a bail bond, but the accused party may sign as principal.

Art. 17.11 [277] [325] [313] How bail bond is taken

Sec. 1. Every court, judge, magistrate or other officer taking a bail bond shall require evidence of the sufficiency of the security offered; but in every case, one surety shall be sufficient, if it be made to appear that such surety is worth at least double the amount of the sum for which he is bound, exclusive of all property exempted by law from execution, and of debts or other encumbrances; and that he is a resident of this State, and has property therein liable to execution worth the sum for which he is bound.

Sec. 2. Provided, however, any person who has signed as a surety on a bail bond and is in default thereon shall thereafter be disqualified to sign as a surety so long as he is in default on said bond. It shall be the duty of the clerk of the court wherein such surety is in default on a bail bond, to notify in writing the sheriff, chief of police, or other peace officer, of such default.

Art. 17.12 [278] [326] [314] Exempt property

The property secured by the Constitution and laws from forced sale shall not, in any case, be held liable for the satisfaction of bail, either as to principal or sureties, if any.

Art. 17.13 [279] [327] [315] Sufficiency of sureties ascertained

To test the sufficiency of the security offered to any bail bond, unless the court or officer taking the same is fully satisfied as to its sufficiency, the following oath shall be made in writing and subscribed by the sureties: "I, do swear that I am worth, in my own right, at least the sum of (here insert the amount in which the surety is bound), after deducting from my property all that which is exempt by the Constitution and Laws of the State from forced sale, and after the payment of all my debts of every description, whether individual or security debts, and after satisfying all encumbrances upon my property which are known to me; that I reside in ..... County, and have property in this State liable to execution worth said amount or more.

(Dated ....., and attested by the judge of the court, clerk, magistrate or sheriff.)"

Such affidavit shall be filed with the papers of the proceedings.

Art. 17.14 [280] [328] [316] Affidavit not conclusive

Such affidavit shall not be conclusive as to the sufficiency of the security; and if the court or officer taking the bail bond is not fully satisfied as to the sufficiency of the security offered, further evidence shall be required before approving the same.

Art. 17.15 [281] [329] [317] Rules for fixing amount of bail

The amount of bail to be required in any case is to be regulated by the court, judge, magistrate or officer taking the bail; they are to be governed in the exercise of this discretion by the Constitution and by the following rules:

1. The bail shall be sufficiently high to give reasonable assurance that the undertaking will be complied with.

2. The power to require bail is not to be so used as to make it an instrument of oppression.

3. The nature of the offense and the circumstances under which is was committed are to be considered.

4. The ability to make bail is to be regarded, and proof may be taken upon this point.

Art. 17.16 [282] [330] [318] Surety may surrender his principal

Those who have become bail for the accused, or either of them, may at any time relieve themselves of their undertaking by surrender-

ing the accused into the custody of the sheriff of the county where he is prosecuted.

Art. 17.17 [283] [331–334] When surrender is made during term

If a surrender of the accused be made during a term of the court to which he has bound himself to appear, the sheriff shall take him before the court; and if he is willing to give other bail, the court shall forthwith require him to do so. If he fails or refuses to give bail, the court shall make an order that he be committed to jail until the bail is given, and this shall be a sufficient commitment without any written order to the sheriff.

Art. 17.18 [284] [332–335] Surrender in vacation

When the surrender is made at any other time than during the session of the court, the sheriff may take the necessary bail bond, but if the defendant fails or refuses to give other bail, the sheriff shall take him before the nearest magistrate; and such magistrate shall issue a warrant of commitment, reciting the fact that the accused has been once admitted to bail, has been surrendered, and now fails or refuses to give other bail.

Art. 17.19 [285] [333] [321] Surety may obtain a warrant

Any surety, desiring to surrender his principal, may upon making affidavit of such intention before the court or magistrate before which the prosecution is pending, obtain from such court or magistrate a warrant of arrest for such principal, which shall be executed as in other cases.

Art. 17.20 [286] [336] [324] Bail in misdemeanor

The sheriff, or other peace officer, in cases of misdemeanor, has authority, whether during the term of the court or in vacation, where he has a defendant in custody under a warrant of commitment, warrant of arrest, or capias, or where the accused has been surrendered by his bail, to take of the defendant a bail bond.

Art. 17.21 [287] [337] [325] Bail in felony

In cases of felony, when the accused is in custody of the sheriff or other peace officer, and the court before which the prosecution is pending is in session in the county where the accused is in custody, the court shall fix the amount of bail, if it is a bailable case and determine if the accused is eligible for a personal bond; and the sheriff, or other peace officer, unless it be the police of a city, is authorized to take a bail bond of the accused in the amount as fixed by the court, to be approved by such officer taking the same, and will thereupon discharge the accused from custody. It shall not be necessary for the defendant or his sureties to appear in court.

Art. 17.22 [288] [338] [326] May take bail in felony

In a felony case, if the court before which the same is pending is not in session in the county where the defendant is in custody, the sheriff, or other peace officer having him in custody, may take his bail bond in such amount as may have been fixed by the court or magistrate, or if no amount has been fixed, then in such amount as such officer may consider reasonable.

Art. 17.23 [289] [339] [327] Sureties severally bound

In all bail bonds taken under any provision of this Code, the sureties shall be severally bound. Where a surrender of the principal is made by one or more of them, all the sureties shall be considered discharged.

Art. 17.24 [290] [340] [328] General rules applicable

All general rules in the Chapter are applicable to bail defendant before an examining court.

Art. 17.25 [291] [341] [329] Proceedings when bail is granted

After a full examination of the testimony, the magistrate shall, if the case be one where bail may properly be granted and ought to be required, proceed to make an order that the accused execute a bail bond with sufficient security, conditioned for his appearance before the proper court.

Art. 17.26 [292] [343] [331] Time given to procure bail

Reasonable time shall be given the accused to procure security.

Art. 17.27 [293] [344] [332] When bail is not given

If, after the allowance of a reasonable time, the security be not given, the magistrate shall make an order committing the accused to jail to be kept safely until legally discharged; and he shall issue a commitment accordingly.

Art. 17.28 [294] [345] [333] When ready to give bail

If the party be ready to give bail, the magistrate shall cause to be prepared a bond, which shall be signed by the accused and his surety or sureties, if any.

Art. 17.29 [295] [346] [334] Accused liberated

When the accused has given the required bond, either to the magistrate or the officer having him in custody, he shall at once be set at liberty.

Art. 17.30 [296] [347] [335] Shall certify proceedings

The magistrate, before whom an examination has taken place upon a criminal accusation, shall certify to all the proceedings had before him, as well as where he discharges, holds to bail or commits, and transmit them, sealed up, to the court before which the defendant may be tried, writing his name across the seals of the envelope. The voluntary statement of the defendant, the testimony, bail bonds, and every other proceeding in the case, shall be thus delivered to the clerk of the proper court, without delay.

Art. 17.31 [297] [348] [336] Duty of clerks who receive such proceedings

If the proceedings be delivered to a district clerk, he shall keep them safely and deliver the same to the next grand jury. If the proceedings are delivered to a county clerk, he shall without delay deliver them to the district or county attorney of his county.

Art. 17.32 [298] [349] [337] In case of no arrest

Upon failure from any cause to arrest the accused the magistrate shall file with the proper clerk the complaint, warrant of arrest, and a list of the witnesses.

Art. 17.33 Request setting of bail

The accused may at any time after being confined request a magistrate to review the written statements of the witnesses for the State as well as all other evidence available at that time in determining the amount of bail. This setting of the amount of bail does not waive the defendant's right to an examining trial as provided in Article 16.01.

Art. 17.34 [300] [351] [339] Witnesses to give bond

Witnesses for the State or defendant may be required by the magistrate, upon the examination of any criminal accusation before him, to give bail for their appearance to testify before the proper court. A personal bond may be taken of a witness by the court before whom the case is pending.

Art. 17.35 [301] [352] [340] Security of witness

The amount of security to be required of a witness is to be regulated by his pecuniary condition, character and the nature of the offense with respect to which he is a witness.

Art. 17.36 [302] [353] [341] Effect of witness bond

The bond given by a witness for his appearance has the same effect as a bond of the accused and may be forfeited and recovered upon in the same manner.

Art. 17.37 [303] Witness may be committed

A witness required to give bail who fails or refuses to do so shall be committed to jail as in other cases of a failure to give bail when required, but shall be released from custody upon giving such bail.

Art. 17.38 [274] [322] [310] Rules applicable to all cases of bail

The rules in this Chapter respecting bail are applicable to all such undertakings when entered into in the course of a criminal action, whether before or after an indictment, in every case where authority is given to any court, judge, magistrate, or other officer, to require bail of a person accused of an offense, or of a witness in a criminal action.

SEARCH WARRANTS

CHAPTER EIGHTEEN

SEARCH WARRANTS

Art.

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Article 18.01 [304] Search warrant

A "search warrant" is a written order, issued by a magistrate, and directed to a peace officer, commanding him to search for personal property, and to seize the same and bring it before such magistrate; or it is a like written order, commanding a peace officer to search a suspected place where it is alleged stolen property is commonly concealed, or implements kept for the purpose of being used in the commission of any designated offense.

No search warrant shall issue for any purpose in this State unless a sworn complaint therefor shall first be filed with the issuing magis-

trate setting forth sufficient facts to satisfy the magistrate that probable cause does in fact exist for its issuance.

Art. 18.02 [305] [356] [344] When it may issue

A search warrant may be issued:

1. To discover property acquired by theft or in any other manner which makes its acquisition a penal offense;

2. To search suspected places where it is alleged property so illegally acquired is commonly kept or concealed;

3. To search places where it is alleged implements are kept for use in forging or counterfeiting;

4. To search places where it is alleged arms or munitions are kept or prepared for the purpose of insurrection or riot; and

5. To seize and bring before a magistrate any such property, implements, arms and munitions.

Art. 18.03 [306] [357] [345] Its object

A warrant to search for and seize stolen property is designed as a means of obtaining possession of the property for the purpose of restoring it to the true owner, and detecting any person guilty of stealing or concealing it.

Art. 18.04 [307] [358] [346] Stolen

The word "stolen", as used in this title, is intended to embrace also the acquisition of property by any means made penal by the law of the State.

Art. 18.05 [308] [359] [347] For property not stolen

When it is alleged that the property was acquired other than by theft, the particular manner of its acquisition must be set forth in the complaint and in the warrant.

Art. 18.06 [309] [360] [348] Rules applicable

The mode of proceeding, directed to be pursued in applying for a warrant to search for and seize stolen property, and the rules prescribed for officers in issuing such warrants and executing the same, the disposition of the property seized, and all other rules herein prescribed on the subject, shall apply and be pursued, when the property to be searched for was acquired in any manner in violation of any provision of the Penal Code.

Art. 18.07 [310] [361] [349] When place is known

A warrant to search for and seize property alleged to have been stolen and concealed at a particular place may be issued by a magistrate, whenever written sworn complaint is made to such magistrate, setting forth:

1. The name of the person accused of having stolen or concealed the property; or if his name be unknown, giving a descrip-

tion of the accused, or stating that the person who stole or concealed the property is unknown;

2. The kind and value of the property alleged to be stolen or concealed;

3. The place where it is alleged to be concealed; and

4. The time, as near as may be, when the property is alleged to have been stolen.

Art. 18.08 [311] [362] [350] General application

A warrant to discover and seize property alleged to have been stolen or otherwise acquired in violation of the penal law, but not alleged to be concealed at any particular place, may be issued whenever written sworn complaint is made setting forth:

1. The name of the person suspected of being the thief, or an accurate description of him, if his name be unknown, or that the thief is unknown;

2. An accurate description of the property, and its probable value;

3. The time, as near as may be, when the property is supposed to have been stolen;

4. That the person complaining has good ground to believe that the property was stolen by the person alleged to be the thief; and

5. Such other facts as may be required by Article 18.01 to establish probable cause.

Art. 18.09 [312] [363] [351] Application to search other places

A warrant to search any place suspected to be one where stolen goods are commonly concealed or where implements are kept for the purpose of aiding in the commission of offenses may be issued by a magistrate on written sworn complaint, setting forth:

1. A description of the place suspected;

2. A description of the kind of property alleged to be commonly concealed at such place, or the kind of implements kept;

3. The name, if known, of the person supposed to have charge of such place, when it is alleged that it is under the charge of any one;

4. When it is alleged that implements are kept at a place for the purpose of aiding in the commission of offenses, the particular offense for which such implements are designed must be set forth; and

5. Such other facts as may be required by Article 18.01 to establish probable cause.

Art. 18.10 [313] [364] [352] Warrant to arrest may issue with search warrant

The magistrate, at the time of issuing a search warrant, may also issue a warrant for the arrest of the person accused of having stolen the property, or of having concealed the same, or of having in

his possession or charge property concealed at a suspected place, or of having possession of implements designed for use in the commission of the offense of forgery, counterfeiting or burglary, or of having the charge of arms or munitions prepared for the purpose of insurrection, or of having prepared such arms or munitions, or who may be, in any legal manner, accused of being accomplice or accessory to any offense above enumerated.

Art. 18.11 [314] [365] [353] Search warrant may order arrest

The search warrant may, in addition to commanding the peace officer to seize property, also require him to bring before the magistrate the person accused of having stolen or concealed the property.

Art. 18.12 [315] [366] [354] To seize property

A search warrant to seize property stolen and concealed shall be deemed sufficient if it contains the following requisites:

1. That it run in the name of "The State of Texas";

2. That it describe the property alleged to be stolen or concealed, and the place where it is alleged to be concealed, and order the same to be brought before the magistrate;

3. That it name the person accused of having stolen or concealed the property; or if his name be unknown, that it describe him with accuracy, and direct the officer to bring such person before the magistrate, or state that the person who stole or concealed the property is unknown; and

4. That it be dated and signed by the magistrate, and directed to the sheriff or other peace officer of the proper county.

Art. 18.13 [316] [367] [355] To search suspected place

A warrant to search a suspected place shall be sufficient if it contains the following requisites:

1. That it run in the name of "The State of Texas";

2. That it describe with accuracy the place suspected;

3. That it describe, as near as may be, the property supposed to be commonly concealed in such suspected place, or the implements alleged to be there kept for the purpose of aiding in the commission of offenses, and state the particular offense for which such implements are designed;

4. That it name the person accused of having charge of the suspected place, if there be any such person, or if his name is unknown, that it describe him with accuracy, and direct him to be brought before the magistrate; and

5. That it be dated and signed by the magistrate, and directed to the sheriff or other peace officer of the proper county.

Art. 18.14 [317] [368] [356] Warrant executed without delay

Any peace officer to whom a search warrant is delivered shall execute it without delay and forthwith return it to the proper magistrate. It must be executed within three days from the time of its issuance, and shall be executed within a shorter period if so directed in the warrant by the magistrate.

Art. 18.15 [318] [369] [357] Days allowed for warrant to run

The time allowed for the execution of a search warrant shall be three whole days, exclusive of the day of its issuance and of the day of its execution. The magistrate issuing a search warrant under the provisions of this Chapter shall endorse on such search warrant the date and hour of the issuance of the same.

Art. 18.16 [319] [370] [358] Officer to give notice of purpose

The officer shall, upon going to the place ordered to be searched, or before seizing any property for which he is ordered to make search, give notice of his purpose to the person who has charge of, or is an inmate of, the place, or who has possession of the property described in the warrant.

Art. 18.17 [320] [371] [359] Power of officer executing warrant

In the execution of a search warrant, the officer may call to his aid any number of citizens in his county, who shall be bound to aid in the execution of the same. If he is resisted in the execution of the warrant, he may use such force as is necessary to overcome the resistance, but no greater.

Art. 18.18 [321] [372] [360] When officer may enter by force

In the execution of a search warrant, the officer may break down a door or a window of any house which he is ordered to search, if he cannot effect an entrance by other less violent means; but when the warrant issues only for the purpose of discovering property stolen or otherwise obtained in violation of the penal law, without designating any particular place where it is supposed to be concealed, no such authority is given to the officer executing the same.

Art. 18.19 [322] [373] [361] Shall seize accused and property

When the property, implements, arms or munitions which the officer is directed to search for and seize are found, he shall take possession of the same, and carry them before the magistrate. He shall also arrest any person whom he is directed to arrest by the warrant, and immediately take such person before the magistrate.

Art. 18.20 [323] [374] [362] Receipt for property

An officer taking any property, implements, arms or munitions, shall receipt therefor to the person from whose possession the same may have been taken.

Art. 18.21 [324] [375] [363] How return made

Upon returning the search warrant, the officer shall state on the back of the same, or on some paper attached to it, the manner in which it has been executed, and shall likewise deliver to the magistrate an inventory of the property, implements, arms or munitions taken in his possession under the warrant.

Art. 18.22 [325] [376] [364] Preventing consequences of theft

All persons have a right to prevent the consequences of theft by seizing any personal property which has been stolen, and bringing it, with the supposed offender, if he can be taken, before a magistrate for examination, or delivering the same to a peace officer for that purpose. To justify such seizure, there must, however, be reasonable ground to suppose the property to be stolen, and the seizure must be openly made and the proceedings had without delay.

Art. 18.23 [326] [377] [365] Disposition of stolen property

When property is taken under any provision of this title and delivered to a magistrate, he shall, if it appear that the same was acquired in violation of the penal law, dispose of it according to the rules prescribed in this Code with reference to the disposition of stolen property.

Art. 18.24 [327] [378] [366] Custody of property found

When a warrant has been issued to search a suspected place, and there be found any such implements, arms, munitions or intoxicating liquors, etc., as are alleged to have been there kept or concealed, the same shall be safely kept by the officer seizing the same, subject to the further order of the magistrate.

Art. 18.25 [328] [379] [367] Magistrate shall investigate

The magistrate, upon the return of a search warrant, shall proceed to try the questions arising upon the same, and shall take testimony as in other examinations before him.

Art. 18.26 [329] [380] [368] Shall discharge defendant

If the magistrate be not satisfied, upon investigation, that there was good ground for the issuance of the warrant, he shall discharge the defendant, and order restitution of the property taken from him, except implements which appear to be designed for forging, counterfeiting or burglary. In such case, the implements shall be kept by the sheriff subject to the order of the proper court.

Art. 18.27 [330] [381] [369] Schedule

The officer who seizes any property under a search warrant shall furnish the magistrate to whom he returns the warrant with a certified schedule of the articles so seized.

Art. 18.28 [331] [382] [370] Examining trial

The magistrate shall proceed to deal with the accused as in other cases before an examining court if he is satisfied there was good ground for issuing the warrant.

Art. 18.29 [332] [383] [371] Certify record to proper court

The magistrate shall keep a record of all the proceedings had before him in cases of search warrants, and shall certify the same and deliver them to the clerk of the court having jurisdiction of the case, before the next term of said court, and accompany the same with all the original papers relating thereto, including the certified schedule of the property seized.

Art. 18.30 [332a] Sale of unclaimed or abandoned property

Sec. 1. All unclaimed or abandoned personal property except whiskey, wine and beer, of every kind, seized by a peace officer, which is not held as evidence to be used in any pending case and has not been ordered destroyed or returned to the person entitled to possession of the same by a magistrate, which shall remain unclaimed for a period of 30 days shall be delivered to the purchasing agent of the county for sale. If the county has no purchasing agent then such property shall be sold by the sheriff of the county.

Sec. 2. The purchasing agent or sheriff of the county, as the case may be, shall mail a notice to the last known address of the owner of such property by certified mail. Such notice shall describe the property being held, give the name and address of the officer holding such property, and shall state that if the owner does not claim such property within six months from the date of the notice such property will be sold and the proceeds of such sale, after deducting the reasonable expense of keeping such property and the costs of sale, placed in the county treasury.

If the owner of such property is unknown or if the address of the owner is unknown, then the purchasing agent or the sheriff, as the case may be, shall cause to be published once in a paper of general circulation in the county a notice containing a description of the property held, the name of the owner if known, the name and address of the officer holding such property, and a statement that if the owner does not claim such property within six months from the date of the publication such property will be sold and the proceeds of such sale after deducting the reasonable expense of keeping such property and the costs of sale, placed in the county treasury.

Sec. 3. The sale of any property hereunder shall be preceded by a notice published once at least three weeks prior to the date of

such sale in a newspaper of general circulation in the county where the sale is to take place, stating the description of the property, the names of the owners if known and the date and place that such sale will occur. If the purchasing agent or sheriff, as the case may be, shall consider any bid as insufficient he need not sell such property but may decline such bid and reoffer such property for sale.

Sec. 4. The real owner of any property sold shall have the right to file a claim to the proceeds of such sale with the commissioners court of the county in which the sale took place. If the claim is allowed by the commissioners court the county treasurer shall pay the owner such funds as were paid into the treasury of the county as the proceeds of the sale. If the claim is denied by the commissioners court or if said court fails to act upon such claim within 90 days, the claimant may sue the county treasurer in a court of competent jurisdiction in the county, and upon sufficient proof of ownership, recover judgment against such county for the recovery of the proceeds of the sale.

AFTER COMMITMENT OR BAIL AND BEFORE THE TRIAL

CHAPTER NINETEEN

ORGANIZATION OF THE GRAND JURY

Art.

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Article 19.01 [333] [384] [372] Appointment of jury commissioners

The district judge, at or during any term of court, shall appoint not less than three, nor more than five persons to perform the duties of jury commissioners, and shall cause the sheriff to notify them of their appointment, and when and where they are to appear. The district judge shall, in the order appointing such commissioners, designate whether such commissioners shall serve during the term at which selected or for the next succeeding term. Such commissioners shall receive as compensation for each day or part thereof they may serve the sum of Ten Dollars, and they shall possess the following qualifications:

1. Be intelligent citizens of the county and able to read and write the English language;

2. Be qualified jurors and freeholders in the county;

3. Have no suit in said court which requires intervention of a jury;

4. Be residents of different portions of the county; and

5. The same person shall not act as jury commissioner more than once in the same year.

Art. 19.02 [334] [385] [373] Notified of appointment

The judge shall cause the proper officer to notify such appointees of such appointment, and when and where they are to appear.

Art. 19.03 [335] [386] [374] Oath of commissioners

When the appointees appear before the judge, he shall administer to them the following oath: "You do swear faithfully to discharge the duties required of you as jury commissioners; that you will not knowingly elect any man as juryman whom you believe to be unfit and not qualified; that you will not make known to any one the name of any juryman selected by you and reported to the court; that you will not, directly or indirectly, converse with any one selected by you as a juryman concerning the merits of any case to be tried at the next term of this court, until after said cause may be tried or continued, or the jury discharged".

Art. 19.04 [336] [387] [375] Instructed

The jury commissioners, after they have been organized and sworn, shall be instructed by the judge in their duties and shall then retire in charge of the sheriff to a suitable room to be secured by the sheriff for that purpose. The clerk shall furnish them the necessary stationery, the names of those appearing from the records of the court to be exempt or disqualified from serving on the jury at each term, and the last assessment roll of the county.

Art. 19.05 [337] [388] [376] Kept free from intrusion

The jury commissioners shall be kept free from the intrusion of any person during their session, and shall not separate without leave of the court until they complete their duties.

Art. 19.06 [338] [389] [377] Shall select grand jurors

The jury commissioners shall select twenty persons from the citizens of different portions of the county to be summoned as grand jurors for the next term of court, or the term of court for which said commissioners were selected to serve, as directed in the order of the court selecting the commissioners.

Art. 19.07 [338a] Extension beyond term of period for which grand jurors shall sit

If prior to the expiration of the term for which the grand jury was impaneled, it is made to appear by a declaration of the foreman or of a majority of the grand jurors in open court, that the investigation by the grand jury of the matters before it cannot be concluded before the expiration of the term, the judge of the district court in which said grand jury was impaneled may, by the entry of an order on the minutes of said court, extend, from time to time, for the purpose of concluding the investigation of matters then before it, the period during which said grand jury shall sit, for not to exceed a total of ninety days after the expiration of the term for which it was impaneled, and all indictments pertaining thereto returned by the grand jury within said extended period shall be as valid as if returned before the expiration of the term. The extension of the term of a grand jury under this article does not affect the provisions of Article 19.06 relating to the selection and summoning of grand jurors for each regularly scheduled term.

Art. 19.08 [339] [390] [378] Qualifications

No person shall be selected or serve as a grand juror who does not possess the following qualifications:

1. He must be a citizen of the State, and of the county in which he is to serve, and be qualified under the Constitution and laws to vote in said county, provided that his failure to pay a poll tax or register to vote shall not be held to disqualify him in this instance;

2. He must be a freeholder within the State, or a householder within the county, or the wife of such householder;

3. He must be of sound mind and good moral character;

4. He must be able to read and write;

5. He must not have been convicted of any felony;

6. He must not be under indictment or other legal accusation for theft or of any felony.

Art. 19.09 [340] [391] [379] Names returned

The names of those selected as grand jurors by the commissioners shall be written upon a paper; and the fact that they were so selected shall be certified and signed by the jury commissioners, who shall place said paper, so certified and signed, in an envelope, and seal the same, and endorse thereon the words, "The list of grand jurors selected at ..... term of the district court", the blank being for the month and year in which the term of the court began its session. The commissioners shall write their names across the seal of said envelope, direct the same to the district judge and deliver it to him in open court.

Art. 19.10 [341] [392] [380] List to clerk

The judge shall deliver the envelope containing the list of grand jurors to the clerk or one of his deputies in open court without opening the same.

Art. 19.11 [342] [393] [381] Oath to clerk

Before the list of grand jurors is delivered to the clerk, the judge shall administer to the clerk and each of his deputies in open court the following oath: "You do swear that you will not open the jury lists now delivered you, nor permit them to be opened until the time prescribed by law; that you will not, directly or indirectly, converse with any one selected as a juror concerning any case or proceeding which may come before such juror for trial in this court at its next term".

Art. 19.12 [343] [394] [382] Deputy clerk sworn

Should the clerk subsequently appoint a deputy, such clerk shall administer to him the same oath, at the time of such appointment.

Art. 19.13 [344] [395] [383] Clerk shall open lists

The grand jury may be convened on the first or any subsequent day of the term. The judge shall designate the day on which the grand jury is to be impaneled and notify the clerk of such date; and within thirty days of such date, and not before, the clerk shall open the envelope containing the list of grand jurors, make out a copy of the names of those selected as grand jurors, certify to it under his official seal, note thereon the day for which they are to be summoned, and deliver it to the sheriff.

Art. 19.14 [345] [396] [384] Summoning

The sheriff shall summon the persons named in the list at least three days, exclusive of the day of service, prior to the day on which the grand jury is to be impaneled, by giving personal notice to each juror of the time and place when and where he is to attend as a grand juror, or by leaving at his place of residence with a member of his family over sixteen years old, a written notice to such juror that he has been selected as a grand juror, and the time and place when and

where he is to attend; or the judge, at his election, may direct the sheriff to summon the grand jurors by registered mail.

Art. 19.15 [346] [397] [385] Return of officer

The officer executing such summons shall return the list on the day on which the grand jury is to be impaneled, with a certificate thereon of the date and manner of service upon each juror. If any of said jurors have not been summoned, he shall also state in his certificate the reason why they have not been summoned.

Art. 19.16 [347] [398] [386] Absent juror fined

A juror legally summoned, failing to attend without a reasonable excuse, may, by order of the court entered on the record, be fined not less than ten dollars nor more than one hundred dollars.

Art. 19.17 [348] [399] [387] Failure to select

If for any reason a grand jury shall not be selected or summoned prior to the commencement of any term of court, or when none of those summoned shall attend, the district judge may at any time after the commencement of the term, in his discretion, direct a writ to be issued to the sheriff commanding him to summon a jury commission, selected by the court, which commission shall select twenty persons, as provided by law, who shall serve as grand jurors.

Art. 19.18 [349] [400] [388] If less than twelve attend

When less than twelve of those summoned to serve as grand jurors are found to be in attendance and qualified to so serve, the court shall order the sheriff to summon such additional number of persons as may be deemed necessary to constitute a grand jury of twelve persons.

Art. 19.19 [350] [401] [389] Jurors to attend forthwith

The jurors provided for in the two preceding Articles shall be summoned in person to attend before the court forthwith.

Art. 19.20 [351] [402] [390] To summon qualified persons

Upon directing the sheriff to summon grand jurors not selected by the jury commissioners, the court shall instruct him that he must summon no person to serve as a grand juror who does not possess the qualifications prescribed by law.

Art. 19.21 [352] [403] [391] To test qualifications

When as many as twelve persons summoned to serve as grand jurors are in attendance upon the court, it shall proceed to test their qualifications as such.

Art. 19.22 [353] [404] [392] Interrogated

Each person who is presented to serve as a grand juror shall, before being impaneled, be interrogated on oath by the court or under his direction, touching his qualifications.

Art. 19.23 [354] [405] [393] Mode of test

In trying the qualifications of any person to serve as a grand juror, he shall be asked:

1. Are you a citizen of this State and county, and qualified to vote in this county, under the Constitution and laws of this State?

2. Are you a freeholder in this State or a householder in this county, or wife of such a householder?

3. Are you able to read and write?

4. Have you ever been convicted of a felony?

5. Are you under indictment or other legal accusation for theft or for any felony?

Art. 19.24 [355] [406] [394] Qualified juror accepted

When, by the answer of the person, it appears to the court that he is a qualified juror, he shall be accepted as such, unless it be shown that he is not of sound mind or of good moral character, or unless it be shown that he is in fact not qualified to serve as a grand juror.

Art. 19.25 [356] [407] [395] Excused if disqualified

Any person summoned who does not possess the requisite qualifications shall be excused by the court from serving.

Art. 19.26 [357] [408] [396] Jury impaneled

When twelve qualified jurors are found to be present, the court shall proceed to impanel them as a grand jury, unless a challenge is made, which may be to the array or to any particular person presented to serve as a grand juror.

Art. 19.27 [358] [409] [397] Any person may challenge

Before the grand jury has been impaneled, any person may challenge the array of jurors or any person presented as a grand juror. In no other way shall objections to the qualifications and legality of the grand jury be heard. Any person confined in jail in the county shall upon his request be brought into court to make such challenge.

Art. 19.28 [359] [410] [398] "Array"

By the "array" of grand jurors is meant the whole body of persons summoned to serve as such before they have been impaneled.

Art. 19.29 [360] [411] [399] "Impaneled" and "panel"

A grand juror is said to be "impaneled" after his qualifications have been tried and he has been sworn. By "panel" is meant the whole body of grand jurors.

Art. 19.30 [361] [412] [400] Challenge to "array"

A challenge to the "array" shall be made in writing for these causes only:

1. That those summoned as grand jurors are not in fact those selected by the jury commissioners; and

2. In case of grand jurors summoned by order of the court, that the officer who summoned them had acted corruptly in summoning any one or more of them.

Art. 19.31 [362] [413] [401] Challenge to juror

A challenge to a particular grand juror may be made orally for the following causes only:

1. That he is not a qualified juror; and

2. That he is the prosecutor upon an accusation against the person making the challenge.

Art. 19.32 [363] [414] [402] Summarily decided

When a challenge to the array or to any individual has been made, the court shall hear proof and decide in a summary manner whether the challenge be well-founded or not.

Art. 19.33 [364] [415] [403] Other jurors summoned

The court shall order another grand jury to be summoned if the challenge to the array be sustained, or order the panel to be completed if by challenge to any particular grand juror their number be reduced below twelve.

Art. 19.34 [365] [416] [404] Oath of grand jurors

When the grand jury is completed, the court shall appoint one of the number foreman; and the following oath shall be administered by the court, or under its direction, to the jurors: "You solemnly swear that you will diligently inquire into, and true presentment make, of all such matters and things as shall be given you in charge; the State's counsel, your fellows and your own, you shall keep secret, unless required to disclose the same in the course of a judicial proceeding in which the truth or falsity of evidence given in the grand jury room, in a criminal case, shall be under investigation. You shall present no person from envy, hatred or malice; neither shall you leave any person unpresented for love, fear, favor, affection or hope of reward; but you shall present things truly as they come to your knowledge, according to the best of your understanding, so help you God".

Art. 19.35 [366] [417] [405] To instruct jury

The court shall instruct the grand jury as to their duty.

Art. 19.36 [367b] Bailiffs appointed

The court and the district attorney may each appoint one or more bailiffs to attend upon the grand jury, and at the time of appointment, the following oath shall be administered to each of them by the court, or under its direction: "You solemnly swear that you will faithfully and impartially perform all the duties of bailiff of the grand jury, and that you will keep secret the proceedings of the grand jury, so help you God". Such bailiffs shall be compensated in a sum to be set by the commissioners court of said county.

Art. 19.37 [368] [419] [407] Bailiff's duties

A bailiff is to obey the instructions of the foreman, to summon all witnesses, and generally, to perform all such duties as the foreman may require of him. One bailiff shall be always with the grand jury, if two or more are appointed.

Art. 19.38 [369] [420] [408] Bailiff violating duty

No bailiff shall take part in the discussions or deliberations of the grand jury nor be present when they are discussing or voting upon a question. The grand jury shall report to the court any violation of duty by a bailiff and the court may punish him for such violation as for contempt.

Art. 19.39 [370] [421] [409] Another foreman appointed

If the foreman of the grand jury is from any cause absent or unable or disqualified to act, the court shall appoint in his place some other member of the body.

Art. 19.40 [371] [422] [410] Quorum

Nine members shall be a quorum for the purpose of discharging any duty or exercising any right properly belonging to the grand jury.

Art. 19.41 [372] [423] [411] Reassembled

A grand jury discharged by the court for the term may be reassembled by the court at any time during the term. If one or more of them fail to reassemble, the court may complete the panel by impaneling other men in their stead in accordance with the rules provided in this Chapter for completing the grand jury in the first instance.

CHAPTER TWENTY

DUTIES AND POWERS OF THE GRAND JURY

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20.03 Attorney representing State entitled to appear.
20.04 Attorney may examine witnesses.
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20.06 Advice from court.
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20.21 Indictment presented.
20.22 Present entered of record.

Article 20.01 [373] [424] [412] Grand jury room

After the grand jury is organized they shall proceed to the discharge of their duties in a suitable place which the sheriff shall prepare for their sessions.

Art. 20.02 [374] [425] [413] Deliberations secret

The deliberations of the grand jury shall be secret. Any grand juror or bailiff who divulges anything transpiring before them in the course of their official duties shall be liable to a fine as for contempt of the court, not exceeding five hundred dollars, and to imprisonment not exceeding thirty days.

Art. 20.03 [375] [426] [414] Attorney representing State entitled to appear

"The attorney representing the State" means the Attorney General, district attorney, criminal district attorney, or county attorney. The attorney representing the State, is entitled to go before the grand jury and inform them of offenses liable to indictment at any time

except when they are discussing the propriety of finding an indictment or voting upon the same.

Art. 20.04 [376] [427] [415] Attorney may examine witnesses

The attorney representing the State may examine the witnesses before the grand jury and may advise as to the proper mode of interrogating them.

Art. 20.05 [377] [428] [416] May send for attorney

The grand jury may send for the State's attorney and ask his advice upon any matter of law or upon any question arising respecting the proper discharge of their duties.

Art. 20.06 [378] [429] [417] Advice from court

The grand jury may also seek and receive advice from the court touching any matter before them, and for this purpose, shall go into court in a body; but they shall so guard the manner of propounding their questions as not to divulge the particular accusation that is pending before them; or they may propound their questions in writing, upon which the court may give them the desired information in writing.

Art. 20.07 [379] [430] [418] Foreman shall preside

The foreman shall preside over the sessions of the grand jury, and conduct its business and proceedings in an orderly manner. He may appoint one or more members of the body to act as clerks for the grand jury.

Art. 20.08 [380] [431] [419] Adjournments

The grand jury shall meet and adjourn at times agreed upon by a majority of the body; but they shall not adjourn, at any one time, for more than three days, unless by consent of the court. With the consent of the court, they may adjourn for a longer time, and shall as near as may be, conform their adjournments to those of the court.

Art. 20.09 [381] [432] [420] Duties of grand jury

The grand jury shall inquire into all offenses liable to indictment of which any member may have knowledge, or of which they shall be informed by the attorney representing the State, or any other credible person.

Art. 20.10 [382] [433] [421] Attorney or foreman may issue process

The attorney representing the state, or the foreman, in term time or vacation, may issue a summons or attachment for any witness in

the county where they are sitting; which summons or attachment may require the witness to appear before them at a time fixed, or forthwith, without stating the matter under investigation.

Art. 20.11 [383] [434] [422] Attachment for out-county witness

The foreman or the attorney representing the State may, upon written application to the district court stating the name and residence of the witness and that his testimony is believed to be material, cause an attachment to be issued to any county in the State for such witness, returnable to the grand jury then in session, or to the next grand jury for the county from whence the same issued, as such foreman or attorney may desire. Such attachment shall command the sheriff or any constable of the county where such witness resides to arrest such witness, and have him before the grand jury at the time and place specified in the writ.

Art. 20.12 [384] [435] [423] Attachment in vacation

The attorney representing the state may cause an attachment for a witness to be issued, as provided in the preceding Article, either in term time or in vacation.

Art. 20.13 [385] [436] [424] Execution of process

The bailiff or other officer who receives process to be served from a grand jury shall forthwith execute the same and return it to the foreman, if the grand jury be in session; and if the grand jury be not in session, the process shall be returned to the district clerk. If the process is returned not executed, the return shall state why it was not executed.

Art. 20.14 [386] [437] [425] Evasion of process

If it be made to appear satisfactorily to the court that a witness for whom an attachment has been issued to go before the grand jury is in any manner wilfully evading the service of such summons or attachment, the court may fine such witness, as for contempt, not exceeding five hundred dollars.

Art. 20.15 [387] [438] [426] When witness refuses to testify

When a witness, brought in any manner before a grand jury, refuses to testify, such fact shall be made known to the attorney representing the State or to the court; and the court may compel the witness to answer the question, if it appear to be a proper one, by imposing a fine not exceeding five hundred dollars, and by committing the party to jail until he is willing to testify.

Art. 20.16 [388] [439] [427] Oaths to witnesses

The following oath shall be administered by the foreman, or under his direction, to each witness before being interrogated: "You solemnly swear that you will not divulge, either by words or signs, any matter about which you may be interrogated, and that you will

keep secret all proceedings of the grand jury which may be had in your presence, and that you will true answers make to such questions as may be propounded to you by the grand jury, or under its direction, so help you God."

Art. 20.17 [389] [440] [428] How suspect or accused questioned

The grand jury, in propounding questions to the person accused or suspected, shall first state the offense with which he is suspected or accused, the county where the offense is said to have been committed and as nearly as may be, the time of commission of the offense, and shall direct the examination to the offense under investigation.

Art. 20.18 [389] [440] [428] How witness questioned

When a felony has been committed in any county within the jurisdiction of the grand jury, and the name of the offender is known or unknown or where it is uncertain when or how the felony was committed, the grand jury shall first state to the witness called the subject matter under investigation, then may ask pertinent questions relative to the transaction in general terms and in such a manner as to determine whether he has knowledge of the violation of any particular law by any person, and if so, by what person.

Art. 20.19 [391] [442–443] Grand jury shall vote

After all the testimony which is accessible to the grand jury shall have been given in respect to any criminal accusation, the vote shall be taken as to the presentment of an indictment, and if nine members concur in finding the bill, the foreman shall make a memorandum of the same with such data as will enable the attorney who represents the State to write the indictment.

Art. 20.20 [392] [444] [432] Indictment prepared

The attorney representing the State shall prepare all indictments which have been found, with as little delay as possible, and deliver them to the foreman, who shall sign the same officially, and said attorney shall endorse thereon the names of the witnesses upon whose testimony the same was found.

Art. 20.21 [393] [445] [433] Indictment presented

When the indictment is ready to be presented, the grand jury shall go in a body into open court, and through their foreman, deliver the indictment to the judge of the court. At least nine members of the grand jury must be present on such occasion.

Art. 20.22 [394] [446] [434] Presentment entered of record

The fact of a presentment of indictment in open court by a grand jury shall be entered upon the minutes of the court, noting briefly the style of the criminal action and the file number of the indictment, but omitting the name of the defendant, unless he is in custody or under bond.

CHAPTER TWENTY-ONE

INDICTMENT AND INFORMATION

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21.26 Order transferring cases.
21.27 Causes transferred to justice court.
21.28 Duty on transfer.
21.29 Proceedings of inferior court.
21.30 Cause improvidently transferred.

Article 21.01 [395] [450] [438] "Indictment"

An "indictment" is the written statement of a grand jury accusing a person therein named of some act or omission which, by law, is declared to be an offense.

Art. 21.02 [396] [451] [439] Requisites of an indictment

An indictment shall be deemed sufficient if it has the following requisites:

1. It shall commence, "In the name and by authority of The State of Texas".

2. It must appear that the same was presented in the district court of the county where the grand jury is in session.

3. It must appear to be the act of a grand jury of the proper county.

4. It must contain the name of the accused, or state that his name is unknown and give a reasonably accurate description of him.

5. It must show that the place where the offense was committed is within the jurisdiction of the court in which the indictment is presented.

6. The time mentioned must be some date anterior to the presentment of the indictment, and not so remote that the prosecution of the offense is barred by limitation.

7. The offense must be set forth in plain and intelligible words.

8. The indictment must conclude, "Against the peace and dignity of the State".

9. It shall be signed officially by the foreman of the grand jury.

Art. 21.03 [397] [452] [440] What should be stated

Everything should be stated in an indictment which is necessary to be proved.

Art. 21.04 [398] [453] [441] The certainty required

The certainty required in an indictment is such as will enable the accused to plead the judgment that may be given upon it in bar of any prosecution for the same offense.

Art. 21.05 [399] [454] [442] Particular intent; intent to defraud

Where a particular intent is a material fact in the description of the offense, it must be stated in the indictment; but in any case where an intent to defraud is required to constitute an offense, it shall be sufficient to allege an intent to defraud, without naming therein the particular person intended to be defrauded.

Art. 21.06 [400] [455] [443] Allegation of venue

When the offense may be prosecuted in either of two or more counties, the indictment may allege the offense to have been committed in the county where the same is prosecuted, or in any county or place where the offense was actually committed.

Art. 21.07 [401] [456] [444] Allegation of name

In alleging the name of the defendant, or of any other person necessary to be stated in the indictment, it shall be sufficient to state one or more of the initials of the Christian name and the surname. When a person is known by two or more names, it shall be sufficient to state either name. When the name of the person is unknown to the grand jury, that fact shall be stated, and if it be the accused, a reasonably accurate description of him shall be given in the indictment.

Art. 21.08 [402] [457] [445] Allegation of ownership

Where one person owns the property, and another person has the possession of the same, the ownership thereof may be alleged to be in either. Where property is owned in common, or jointly, by two or more persons, the ownership may be alleged to be in all or either of them. When the property belongs to the estate of a deceased person, the ownership may be alleged to be in the executor, administrator or heirs of such deceased person, or in any one of such heirs. Where it is the separate property of a married woman, the ownership may be alleged to be in her, or in her husband. Where the ownership of the property is unknown to the grand jury, it shall be sufficient to allege that fact.

Art. 21.09 [403] [458] [446] Description of property

When it becomes necessary to describe property of any kind in an indictment, a general description of the same by name, kind, quality, number and ownership, if known, shall be sufficient. If the property be real estate, its general locality in the county, and the name of the owner, occupant or claimant thereof, shall be a sufficient description of the same.

Art. 21.10 [404] [459] [447] "Felonious" and "feloniously"

It is not necessary to use the words "felonious" or "feloniously" in any indictment.

Art. 21.11 [405] [460] [448] Certainty; what sufficient

An indictment shall be deemed sufficient which charges the commission of the offense in ordinary and concise language in such a manner as to enable a person of common understanding to know what is meant, and with that degree of certainty that will give the defendant notice of the particular offense with which he is charged, and enable the court, on conviction, to pronounce the proper judgment; and in no case are the words "force and arms" or "contrary to the form of the statute" necessary.

Art. 21.12 [406] [461] [449] Special and general terms

When a statute defining any offense uses special or particular terms, indictment on it may use the general term which, in common language, embraces the special term. To charge an unlawful sale, it is necessary to name the purchaser.

Art. 21.13 [407] [463] [451] Act with intent to commit an offense

An indictment for an act done with intent to commit some other offense may charge in general terms the commission of such act with intent to commit such other offense.

Art. 21.14 [408] [465] [453] Perjury and false swearing

An indictment for perjury or false swearing need not charge the precise language of the false statement, but may state the substance of the same, and no such indictment shall be held insufficient on account of any variance which does not affect the subject matter or general import of such false statement; and it is not necessary in such indictment to set forth the pleadings, records or proceeding with which the false statement is connected, nor the commission or authority of the court or person before whom the false statement was made; but it is sufficient to state the name of the court or officer by whom the oath was administered with the allegation of the falsity of the matter on which the perjury or false swearing is assigned.

Art. 21.15 [408a] Must allege acts of negligence

Whenever negligence enters into or is a part or element of any offense, or it is charged that the accused acted negligently or with negligence in the committing of an offense, the complaint, information, or indictment in order to be sufficient in any such case must allege, with reasonable certainty, the act or acts relied upon to constitute negligence, and in no event shall it be sufficient to allege merely that the accused, in committing the offense, acted negligently or with negligence.

Art. 21.16 [409] [470] [458] Certain forms of indictments

The following form of indictments is sufficient:

"In the name and by authority of the State of Texas: The grand jury of ..... County, State of Texas, duly organized at the ..... term, A.D. ....., of the district court of said county, in said court at said term, do present that ..... (defendant) on the ..... day of ..... A.D. ....., in said county and State, did ..... (description of offense) against the peace and dignity of the State.

....., Foreman of the grand jury."

Art. 21.17 [410] [474] [462] Following statutory words

Words used in a statute to define an offense need not be strictly pursued in the indictment; it is sufficient to use other words conveying the same meaning, or which include the sense of the statutory words.

Art. 21.18 [411] [475] [463] Matters of judicial notice

Presumptions of law and matters of which judicial notice is taken (among which are included the authority and duties of all officers elected or appointed under the General Laws of this State) need not be stated in an indictment.

Art. 21.19 [412] [476] [464] Defects of form

An indictment shall not be held insufficient, nor shall the trial, judgment or other proceedings thereon be affected, by reason of any defect of form which does not prejudice the substantial rights of the defendant.

Art. 21.20 [413] [477] [465] "Information"

An "information" is a written statement filed and presented in behalf of the State by the district or county attorney, charging the defendant with an offense which may by law be so prosecuted.

Art. 21.21 [414] [478] [466] Requisites of an information

An information is sufficient if it has the following requisites:

1. It shall commence, "In the name and by authority of the State of Texas";

2. That it appear to have been presented in a court having jurisdiction of the offense set forth;

3. That it appear to have been presented by the proper officer;

4. That it contain the name of the accused, or state that his name is unknown and give a reasonably accurate description of him;

5. It must appear that the place where the offense is charged to have been committed is within the jurisdiction of the court where the information is filed;

6. That the time mentioned be some date anterior to the filing of the information, and that the offense does not appear to be barred by limitation;

7. That the offense be set forth in plain and intelligible words;

8. That it conclude, "Against the peace and dignity of the State"; and

9. It must be signed by the district or county attorney, officially.

Art. 21.22 [415] [479] [467] Information based upon complaint

No information shall be presented until affidavit has been made by some credible person charging the defendant with an offense. The affidavit shall be filed with the information. It may be sworn to before the district or county attorney who, for that purpose, shall have power to administer the oath, or it may be made before any officer authorized by law to administer oaths.

Art. 21.23 [416] [480] [468] Rules as to indictment apply to information

The rules with respect to allegations in an indictment and the certainty required apply also to an information.

Art. 21.24 [417; 408a] [481] [469] May contain several counts but only one offense

An indictment, information or complaint may contain as many counts charging the same offense as the attorney who prepares it, acting in good faith, may think necessary to insert, but may not charge more than one offense. An indictment or information shall be sufficient if any one of its counts be sufficient.

Art. 21.25 [418] [482] [470] When indictment has been lost, etc.

When an indictment or information has been lost, mislaid, mutilated or obliterated, the district or county attorney may suggest the fact to the court; and the same shall be entered upon the minutes of the court. In such case, another indictment or information may be substituted, upon the written statement of such attorney that it is substantially the same as that which has been lost, mislaid, mutilated, or obliterated. Or another indictment may be presented, as in the first instance; and in such case, the period for the commencement of the prosecution shall be dated from the time of making such entry.

Art. 21.26 [419] [483] [471] Order transferring cases

Upon the filing of an indictment in the district court which charges an offense over which such court has no jurisdiction, the judge of such court shall make an order transferring the same to such inferior court as may have jurisdiction, stating in such order the cause transferred and to what court transferred.

Art. 21.27 [420] [484] [472] Causes transferred to justice court

Causes over which justices of the peace have jurisdiction may be transferred to a justice of the peace at the county seat, or in the discretion of the judge, to a justice of the precinct in which the same can be most conveniently tried, as may appear by memorandum endorsed by the grand jury on the indictment or otherwise. If it appears to the judge that the offense has been committed in any incorporated town or city, the cause shall be transferred to a justice in said town or city, if there be one therein; and any justice to whom such cause may be transferred shall have jurisdiction to try the same.

Art. 21.28 [421] [485] [473] Duty on transfer

The clerk of the court, without delay, shall deliver the indictments in all cases transferred, together with all the papers relating to each case, to the proper court or justice, as directed in the order of transfer; and shall accompany each case with a certified copy of all the proceedings taken therein in the district court, and with a bill of the costs that have accrued therein in the district court. The said costs shall be taxed in the court in which said cause is tried, in the event of a conviction.

Art. 21.29 [422] [486] [474] Proceedings of inferior court

Any case so transferred shall be entered on the docket of the court to which it is transferred. All process thereon shall be issued and the defendant tried as if the case had originated in the court to which it was transferred.

Art. 21.30 [423] [487] [475] Cause improvidently transferred

When a cause has been improvidently transferred to a court which has no jurisdiction of the same, the court to which it has been transferred shall order it to be re-transferred to the proper court; and the same proceedings shall be had as in the case of the original transfer. In such case, the defendant and the witnesses shall be held bound to appear before the court to which the case has been re-transferred, the same as they were bound to appear before the court so transferring the same.

CHAPTER TWENTY-TWO

FORFEITURE OF BAIL

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Article 22.01 [424] [488] [476] Bail forfeited, when

When a defendant is bound by bail to appear and fails to appear in any court in which such case may be pending and at any time when his personal appearance is required under this Code, or by any court or magistrate, a forfeiture of his bail shall be taken by such court.

Art. 22.02 [425] [489] [477] Manner of taking a forfeiture

Bail bonds and personal bonds are forfeited in the following manner: The name of the defendant shall be called distinctly at the courthouse door, and if the defendant does not appear within a reasonable time after such call is made, judgment shall be entered that the State of Texas recover of the defendant the amount of money in which he is bound, and of his sureties, if any, the amount of money in which they are respectively bound, which judgment shall state that the same will be made final, unless good cause be shown why the defendant did not appear.

Art. 22.03 [426] [490] [478] Citation to sureties

Upon entry of judgment, a citation shall issue forthwith notifying the sureties of the defendant, if any, that the bond has been forfeited, and requiring them to appear and show cause why the judgment of forfeiture should not be made final.

Art. 22.04 [427] [491] [479] Requisites of citation

A citation shall be sufficient if it be in the form provided for citations in civil cases in such court; provided, however, that a copy of the judgment of forfeiture entered by the court shall be attached to the citation and the citation shall notify the parties cited to appear and show cause why the judgment of forfeiture should not be made final.

Art. 22.05 [428] [492] [480] Citation as in civil actions

Sureties shall be entitled to notice by service of citation, the length of time and in the manner required in civil actions; and the officer executing the citation shall return the same as in civil actions. It shall not be necessary to give notice to the defendant unless he has furnished his address on the bond, in which event notice to the defendant shall be deposited in the United States mail directed to the defendant at the address shown on the bond.

Art. 22.06 [429] [493] [481] Citation by publication

Where the surety is a nonresident of the State, or where he is a transient person, or where his residence is unknown, the district or county attorney may, upon application in writing to the county clerk, stating the facts, obtain a citation to be served by publication; and the same shall be served by a publication and returned as in civil actions.

Art. 22.07 [430] [494] [482] Cost of publication

When service of citation is made by publication, the county in which the forfeiture has been taken shall pay the costs thereof, to be taxed as costs in the case.

Art. 22.08 [431] [495] [483] Service out of the State

Service of a certified copy of the citation upon any absent or non-resident surety may be made outside of the limits of this State by any person competent to make oath of the fact; and the affidavit of such person, stating the facts of such service, shall be a sufficient return.

Art. 22.09 [432] [496] [484] When surety is dead

If the surety is dead at the time the forfeiture is taken, the forfeiture shall nevertheless be valid. The final judgment shall not be rendered where a surety has died, either before or after the forfeiture has been taken, unless his executor, administrator or heirs, as the case may be, have been cited to appear and show cause why the judgment should not be made final, in the same manner as provided in the case of the surety.

Art. 22.10 [433] [497] [485] Scire facias docket

When a forfeiture has been declared upon a bond, the court or clerk shall docket the case upon the scire facias or upon the civil docket, in the name of the State of Texas, as plaintiff, and the principal and his sureties, if any, as defendants; and the proceedings had therein shall be governed by the same rules governing other civil suits.

Art. 22.11 [434] [498] [486] Sureties may answer

After the forfeiture of the bond, if the sureties, if any, have been duly notified, the sureties, if any, may answer in writing and show cause why the defendant did not appear, which answer may be filed within the time limited for answering in other civil actions.

Art. 22.12 [435] [499] [487] Proceedings not set aside for defect of form

The bond, the judgment declaring the forfeiture, the citation and the return thereupon, shall not be set aside because of any defect of form; but such defect of form may, at any time, be amended under the direction of the court.

Art. 22.13 [436] [500] [488] Causes which will exonerate

The following causes, and no other, will exonerate the defendant and his sureties, if any, from liability upon the forfeiture taken:

1. That the bond is, for any cause, not a valid and binding undertaking in law. If it be valid and binding as to the principal, and one or more of his sureties, if any, they shall not be exonerated from liability because of its being invalid and not binding as to another surety or sureties, if any. If it be invalid and not binding as to the principal, each of the sureties, if any, shall be exonerated from liability. If it be valid and binding as to the principal, but not so as to

the sureties, if any, the principal shall not be exonerated, but the sureties, if any, shall be.

2. The death of the principal before the forfeiture was taken.

3. The sickness of the principal or some uncontrollable circumstance which prevented his appearance at court, and it must, in every such case, be shown that his failure to appear arose from no fault on his part. The causes mentioned in this subdivision shall not be deemed sufficient to exonerate the principal and his sureties, if any, unless such principal appear before final judgment on the bond to answer the accusation against him, or show sufficient cause for not so appearing.

4. Failure to present an indictment or information at the first term of the court which may be held after the principal has been admitted to bail, in case where the party was bound over before indictment or information, and the prosecution has not been continued by order of the court.

Art. 22.14 [437] [501] [489] Judgment final

When, upon a trial of the issues presented, no sufficient cause is shown for the failure of the principal to appear, the judgment shall be made final against him and his sureties, if any, for the amount in which they are respectively bound; and the same shall be collected by execution as in civil actions. Separate executions shall issue against each party for the amount adjudged against him. The costs shall be equally divided between the sureties, if there be more than one.

Art. 22.15 [438] [502] [490] Judgment final by default

When the sureties have been duly cited and fail to answer, and the principal also fails to answer within the time limited for answering in other civil actions, the court shall enter judgment final by default.

Art. 22.16 [439] [503] [491] The court may remit

If, before final judgment is entered against the bail, the principal appears or is arrested and lodged in jail of the proper county, the court may, at its discretion, remit the whole or part of the sum specified in the bond.

Art. 22.17 [440] [504] [492] Forfeiture set aside

When the principal appears before the entry of final judgment, and sufficient cause is shown for his failure to appear before the forfeiture is taken, and a trial is had of the criminal action pending against him, he shall be entitled to have the forfeiture set aside. The criminal action against him shall stand for trial, but the State shall not be forced to try the same until reasonable time has been allowed to prepare for trial, and the State shall, in such case, be entitled to a continuance.

CHAPTER TWENTY-THREE

THE CAPIAS

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Article 23.01 [441] [505] [493] Definition of a "capias"

A "capias" is a writ issued by the court or clerk, and directed "To any peace officer of the State of Texas", commanding him to arrest a person accused of an offense and bring him before that court immediately, or on a day or at a term stated in the writ.

Art. 23.02 [442] [506] [494] Its requisites

A capias shall be held sufficient if it have the following requisites:

1. That it run in the name of "The State of Texas";

2. That it name the person whose arrest is ordered, or if unknown, describe him;

3. That it specify the offense of which the defendant is accused, and it appear thereby that he is accused of some offense against the penal laws of the State;

4. That it name the court to which and the time when it is returnable; and

5. That it be dated and attested officially by the authority issuing the same.

Art. 23.03 [443] [507] [495] Capias or summons in felony

(a) A capias shall be immediately issued by the district clerk upon each indictment for felony presented, or upon the request of the attorney representing the State, a summons shall be issued by the district clerk, and shall be delivered by the clerk or mailed to the sheriff of the county where the defendant resides or is to be found. A capias or a summons need not issue for a defendant in custody or under bond.

(b) Upon the request of the attorney representing the State a summons instead of a capias shall issue. If a defendant fails to appear in response to the summons a capias shall issue.

(c) Summons. The summons shall be in the same form as the capias except that it shall summon the defendant to appear before the proper court at a stated time and place. The summons shall be served upon a defendant by delivering a copy to him personally, or by leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by mailing it to the defendant's last known address.

Art. 23.04 [444] [508] [496] In misdemeanor case

In misdemeanor cases the capias or summons shall issue from a court having jurisdiction of the case. The summons shall be issued only upon request of the attorney representing the State and shall follow the same form and procedure as in a felony case.

Art. 23.05 [445] [509] [497] Capias after forfeiture

Where a forfeiture of bail is declared, a capias shall be immediately issued for the arrest of the defendant, and when arrested, he shall be required to make new bail, unless the forfeiture taken has been set aside under the third subdivision of Article 22.13, in which case the defendant and his sureties shall remain bound under the same bail.

Art. 23.06 [446] [510] [498] New bail in felony case

When a defendant who has been arrested for a felony under a capias has previously given bail to answer said charge, his sureties, if any, shall be released by such arrest, and he shall be required to give new bail.

Art. 23.07 [447] [511] [499] Capias does not lose its force

A capias shall not lose its force if not executed and returned at the time fixed in the writ, but may be executed at any time afterward, and return made. All proceedings under such capias shall be as valid as if the same had been executed and returned within the time specified in the writ.

Art. 23.08 [448] [512] [500] Reasons for retaining capias

When the capias is not returned at the time fixed in the writ, the officer holding it shall notify the court from whence it was issued, in writing, of his reasons for retaining it.

Art. 23.09 [449] [513] [501] Capias to several counties

Capiases for a defendant may be issued to as many counties as the district or county attorney may direct.

Art. 23.10 [450] [514] [502] Bail in felony

In cases of arrest for felony in the county where the prosecution is pending, during a term of court, the officer making the arrest may take bail as provided in Article 17.21.

Art. 23.11 [451] [515] [503] Sheriff may take bail in felony

In cases of arrest for felony less than capital, made during vacation or made in another county than the one in which the prosecution is pending, the sheriff may take bail; in such cases the amount of the bail bond shall be the same as is endorsed upon the capias; and if no amount be endorsed on the capias, the sheriff shall require a reasonable amount of bail. If it be made to appear by affidavit, made by any district attorney, county attorney, or the sheriff approving the bail bond, to a judge of the Court of Criminal Appeals, district or county court, that the bail taken in any case after indictment is insufficient in amount, or that the sureties are not good for the amount, or that the bond is for any reason defective or insufficient, such judge shall issue a warrant of arrest and require of the defendant sufficient bond, according to the nature of the case.

Art. 23.12 [452] [516] [504] Court shall fix bail in felony

In felony cases which are bailable, the court shall, before adjourning, fix and enter upon the minutes the amount of the bail to be required in each case. The clerk shall endorse upon the capias the amount of bail required. In case of neglect to so comply with this Article, the arrest of the defendant, and the bail taken by the sheriff, shall be as legal as if there had been no such omission.

Art. 23.13 [453] [517] [505] Who may arrest under capias

A capias may be executed by any peace officer. In felony cases, the defendant must be delivered immediately to the sheriff of the county where the arrest is made together, with the writ under which he was taken.

Art. 23.14 [454] [518] [506] Bail in misdemeanor

Any officer making an arrest under a capias in a misdemeanor may in term time or vacation take a bail bond of the defendant.

Art. 23.15 [455] [519] [507] Arrest in capital cases

Where an arrest is made under a capias in a capital case, the sheriff shall confine the defendant in jail, and the capias shall, for that purpose, be a sufficient commitment. This Article is applicable when the arrest is made in the county where the prosecution is pending.

Art. 23.16 [456] [520] [508] Arrest in capital case in another county

In each capital case where a defendant is arrested under a capias in a county other than that in which the case is pending, the sheriff who arrests or to whom the defendant is delivered, shall convey him immediately to the county from which the capias issued and deliver him to the sheriff of such county.

Art. 23.17 [457] [521] [509] Return of bail and capias

When an arrest has been made and a bail taken, such bond, together with the capias, shall be returned forthwith to the proper court.

Art. 23.18 [460] [524] [512] Return of capias

The return of the capias shall be made to the court from which it is issued. If it has been executed, the return shall state what disposition has been made of the defendant. If it has not been executed, the cause of the failure to execute it shall be fully stated. If the defendant has not been found, the return shall further show what efforts have been made by the officer to find him, and what information he has as to the defendant's whereabouts.

CHAPTER TWENTY-FOUR

SUBPOENA AND ATTACHMENT

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Article 24.01 [461] [525] [513] Definition of "subpoena"

A "subpoena" is a writ issued to the sheriff or other proper officer commanding him to summon one or more persons therein named to appear at a certain term of the court, or on a certain day, to testify in a criminal action, or before an examining court, coroner's inquest, the grand jury, or before a judge hearing an application under habeas corpus, or in any other case in which the testimony of a witness may be required under the provisions of this Code. The writ shall be dated and signed officially by the court or clerk issuing the same, but need not be under seal.

Art. 24.02 [462] [526] [514] Subpoena duces tecum

If a witness have in his possession any instrument of writing or other thing desired as evidence, the subpoena may specify such evidence and direct that the witness bring the same with him and produce it in court.

Art. 24.03 [463] [526–529] Subpoena and application therefor

Before the clerk or his deputy shall be required or permitted to issue a subpoena in any felony case pending in any district or criminal district court of this State of which he is clerk or deputy, the defendant or his attorney or the State's attorney shall make written, sworn application to such clerk for each witness desired. Such application shall state the name of each witness desired, the location and vocation, if known, and that the testimony of said witness is material to the State or to the defense. The application must be filed with the clerk and placed with the papers in the cause and made available to both the State and the defendant. As far as is practical such clerk shall include in one subpoena the names of all witnesses for the State and for defendant, and such process shall show that the witnesses are sum-

moned for the State or for the defendant. When a witness has been served with a subpoena, attached or placed under bail at the instance of either party in a particular case, such execution of process shall inure to the benefit of the opposite party in such case in the event such opposite party desires to use such witness on the trial of the case, provided that when a witness has once been served with a subpoena, no further subpoena shall be issued for said witness.

Art. 24.04 [464] [527] [515] Service and return of subpoena

A subpoena is served by reading the same in the hearing of the witness. The officer having the subpoena shall make due return thereof, showing the time and manner of service, if served, and if not served, he shall show in his return the cause of his failure to serve it; and if the witness could not be found, he shall state the diligence he has used to find him, and what information he has as to the whereabouts of the witness.

Art. 24.05 [465] [528] [516] Refusing to obey

If a witness refuses to obey a subpoena, he may be fined at the discretion of the court, as follows: In a felony case, not exceeding five hundred dollars; in a misdemeanor case, not exceeding one hundred dollars.

Art. 24.06 [466] [530] [518] What is disobedience of a subpoena

It shall be held that a witness refuses to obey a subpoena:

1. If he is not in attendance on the court on the day set apart for taking up the criminal docket or on any day subsequent thereto and before the final disposition or continuance of the particular case in which he is a witness;

2. If he is not in attendance at any other time named in a writ; and

3. If he refuses without legal cause to produce evidence in his possession which he has been summoned to bring with him and produce.

Art. 24.07 [467] [531] [519] Fine against witness conditional

When a fine is entered against a witness for failure to appear and testify, the judgment shall be conditional; and a citation shall issue to him to show cause, at the term of the court at which said fine is entered, or at the first term thereafter, at the discretion of the judge of said court, why the same should not be final; provided, citation shall be served upon said witness in the manner and for the length of time prescribed for citations in civil cases.

Art. 24.08 [468] [532] [520] Witness may show cause

A witness cited to show cause, as provided in the preceding Article, may do so under oath, in writing or verbally, at any time before judgment final is entered against him; but if he fails to show cause within the time limited for answering in civil actions, a judgment final by default shall be entered against him.

Art. 24.09 [469] [533] [521] Court may remit fine

It shall be within the discretion of the court to judge of the sufficiency of an excuse rendered by a witness, and upon the hearing the court shall render judgment against the witness for the whole or any part of the fine, or shall remit the fine altogether, as to the court may appear proper and right. Said fine shall be collected as fines in misdemeanor cases.

Art. 24.10 [470] [534] [522] When witness appears and testifies

When a fine has been entered against a witness, but no trial of the cause takes place, and such witness afterward appears and testifies upon the trial thereof, it shall be discretionary with the judge, though no good excuse be rendered, to reduce the fine or remit it altogether; but the witness, in such case, shall, nevertheless, be adjudged to pay all the costs accruing in the proceeding against him by reason of his failure to attend.

Art. 24.11 [471] [535] [523] Requisites of an "Attachment"

An "attachment" is a writ issued by a clerk of a court under seal, or by any magistrate, or by the foreman of a grand jury, in any criminal action or proceeding authorized by law, commanding some peace officer to take the body of a witness and bring him before such court, magistrate or grand jury on a day named, or forthwith, to testify in behalf of the State or of the defendant, as the case may be. It shall be dated and signed officially by the officer issuing it.

Art. 24.12 [472] [536] [524] When attachment may issue

When a witness who resides in the county of the prosecution has been duly served with a subpoena to appear and testify in any criminal action or proceeding fails to so appear, the State or the defendant shall be entitled to have an attachment issued forthwith for such witness.

Art. 24.13 Attachment for convict witnesses

All persons who have been or may be convicted in this State, and who are confined in an institution operated by the Department of Corrections or any jail in this State, shall be permitted to testify in person in any court for the State and the defendant when the pre-

siding judge finds, after hearing, that the ends of justice require their attendance, and directs that an attachment issue to accomplish the purpose, notwithstanding any other provision of this Code. Nothing in this Article shall be construed as limiting the power of the courts of this State to issue bench warrants.

Art. 24.14 [473] [537] [524a] Attachment for resident witness

When a witness resides in the county of the prosecution, whether he has disobeyed a subpoena or not, either in term-time or vacation, upon the filing of an affidavit with the clerk by the defendant or State's counsel, that he has good reason to believe, and does believe, that such witness is a material witness, and is about to move out of the county, the clerk shall forthwith issue an attachment for such witness; provided, that in misdemeanor cases, when the witness makes oath that he cannot give surety, the officer executing the attachment shall take his personal bond.

Art. 24.15 [474] [538] [525a] To secure attendance before grand jury

At any time before the first day of any term of the district court, the clerk, upon application of the State's attorney, shall issue a subpoena for any witness who resides in the county. If at the time such application is made, such attorney files a sworn application that he has good reason to believe and does believe that such witness is about to move out of the county, then said clerk shall issue an attachment for such witness to be and appear before said district court on the first day thereof to testify as a witness before the grand jury. Any witness so summoned, or attached, who shall fail or refuse to obey a subpoena or attachment, shall be punished by the court by a fine not exceeding five hundred dollars, to be collected as fines and costs in other criminal cases.

Art. 24.16 [475] [539] Application for out-county witness

Where, in misdemeanor cases in which confinement in jail is a permissible punishment, or in felony cases, a witness resides out of the county in which the prosecution is pending, the State or the defendant shall be entitled, either in term-time or in vacation, to a subpoena to compel the attendance of such witness on application to the proper clerk or magistrate. Such application shall be in the manner and form as provided in Article 24.03. Witnesses in such misdemeanor cases shall be compensated in the same manner as in felony cases. This Article shall not apply to more than one character witness in a misdemeanor case.

Art. 24.17 [476] [540] Duty of officer receiving said subpoena

The officer receiving said subpoena shall execute the same by delivering a copy thereof to each witness therein named. He shall make due return of said subpoena, showing therein the time and manner of executing the same, and if not executed, such return shall show

why not executed, the diligence used to find said witness, and such information as the officer has as to the whereabouts of said witness.

Art. 24.18 [477] [541] Subpoena returnable forthwith

When a subpoena is returnable forthwith, the officer shall immediately serve the witness with a copy of the same; and it shall be the duty of said witness to immediately make his appearance before the court, magistrate or other authority issuing the same. If said witness makes affidavit of his inability from lack of funds to appear in obedience to said subpoena, the officer executing the same shall provide said witness, if said subpoena be issued as provided in Article 24.16, with the necessary funds or means to appear in obedience to said subpoena, taking his receipt therefor, and showing in his return on said subpoena, under oath, the amount furnished to said witness, together with the amount of his fees for executing said subpoena.

Art. 24.19 [478] [542] Certificate to officer

The clerk, magistrate, or foreman of the grand jury issuing said process, immediately upon the return of said subpoena, if issued as provided in Article 24.16, shall issue to such officer a certificate for the amount furnished such witness, together with the amount of his fees for executing the same, showing the amount of each item; which certificate shall be approved by the district judge and recorded by the district clerk in a book kept for that purpose; and said certificate transmitted to the officer executing such subpoena, which amount shall be paid by the State, as costs are paid in other criminal matters.

Art. 24.20 [479] [543] Subpoena returnable at future date

If the subpoena be returnable at some future date, the officer shall have authority to take bail of such witness for his appearance under said subpoena, which bond shall be returned with such subpoena, and shall be made payable to the State of Texas, in the amount in which the witness and his surety, if any, shall be bound and conditioned for the appearance of the witness at the time and before the court, magistrate or grand jury named in said subpoena, and shall be signed by the witness and his sureties. If the witness refuses to give bond, he shall be kept in custody until such time as he starts in obedience to said subpoena, when he shall be, upon affidavit being made, provided with funds necessary to appear in obedience to said subpoena.

Art. 24.21 [480] [544] Stating bail in subpoena

The court or magistrate issuing said subpoena may direct therein the amount of the bail to be required. The officer may fix the amount if not specified, and in either case, shall require sufficient security, to be approved by himself.

Art. 24.22 [481] [545] Witness fined and attached

If a witness summoned from without the county refuses to obey a subpoena, he shall be fined by the court or magistrate not exceeding

five hundred dollars, which fine and judgment shall be final, unless set aside after due notice to show cause why it should not be final, which notice may immediately issue, requiring the defaulting witness to appear at once or at the next term of said court, in the discretion of the judge, to answer for such default. The court may cause to be issued at the same time an attachment for said witness, directed to the proper county, commanding the officer to whom said writ is directed to take said witness into custody and have him before said court at the time named in said writ; in which case such witness shall receive no fees, unless it appears to the court that such disobedience is excusable, when the witness may receive the same pay as if he had not been attached. Said fine when made final and all costs thereon shall be collected as in other criminal cases. Said fine and judgment may be set aside in vacation or at the time or any subsequent term of the court for good cause shown, after the witness testifies or has been discharged. The following words shall be written or printed on the face of such subpoena for out-county witnesses: "A disobedience of this subpoena is punishable by fine not exceeding five hundred dollars, to be collected as fines and costs in other criminal cases."

Art. 24.23 [482] [546] [535] Witness released

A witness who is in custody for failing to give bail shall be at once released upon giving bail required.

Art. 24.24 [483] [547] [536] Bail for witness

Witnesses on behalf of the State or defendant may, at the request of either party, be required to enter into bail in an amount to be fixed by the court to appear and testify in a criminal action; but if it shall appear to the court that any witness is unable to give security upon such bail, he shall be released without security.

Art. 24.25 [484] [548] [537] Personal bond of witness

When it appears to the satisfaction of the court that personal bond of the witness will insure his attendance, no security need be required of him; but no bond without security shall be taken by any officer.

Art. 24.26 [485] [549] [538] Enforcing forfeiture

The bond of a witness may be enforced against him and his sureties, if any, in the manner pointed out in this Code for enforcing the bond of a defendant in a criminal case.

Art. 24.27 [486] [550] [539] No surrender after forfeiture

The sureties of a witness have no right to discharge themselves by the surrender of the witness after the forfeiture of their bond.

Art. 24.28 [486a] Uniform Act to secure attendance of witnesses from without State

Short Title

Sec. 1. This Act may be cited as the "Uniform Act to Secure the Attendance of Witnesses from Without the State in Criminal Proceedings".

Definitions

Sec. 2. "Witness" as used in this Act shall include a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution or proceeding.

The word "State" shall include any territory of the United States and the District of Columbia.

The word "summons" shall include a subpoena, order or other notice requiring the appearance of a witness.

Summoning witness in this State to testify in another State

Sec. 3. If a judge of a court of record in any State which by its laws has made provision for commanding persons within that State to attend and testify in this State certifies under the seal of such court that there is a criminal prosecution pending in such court, or that a grand jury investigation has commenced or is about to commence, that a person being within this State is a material witness in such prosecution, or grand jury investigation, and that his presence will be required for a specified number of days, upon presentation of such certificate to any judge of a court of record in the county in which such person is, such judge shall fix a time and place for a hearing, and shall make an order directing the witness to appear at a time and place certain for the hearing.

If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other State, and that the laws of the State in which the prosecution is pending, or grand jury investigation has commenced or is about to commence, (and of any other State through which the witness may be required to pass by ordinary course of travel), will give to him protection from arrest and the service of civil and criminal process, he shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending, or where a grand jury investigation has commenced or is about to commence at a time and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

If said certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting State to assure his attendance in the requesting State, such judge may, in lieu of notification of the hearing, direct that such witness be forthwith brought before him for said hearing; and the judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability may, in lieu of issuing subpoena or sum-

mons, order that said witness be forthwith taken into custody and delivered to an officer of the requesting State.

If the witness, who is summoned as above provided, after being paid or tendered by some properly authorized person the sum of ten cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and five dollars for each day that he is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this State.

Witness from another State summoned to testify in this State

Sec. 4. If a person in any State, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence, in this State, is a material witness in a prosecution pending in a court of record in this State, or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. Said certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this State to assure his attendance in this State. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

If the witness is summoned to attend and testify in this State he shall be tendered the sum of ten cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and five dollars for each day that he is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this State a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court. If such witness, after coming into this State, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this State.

Exemption from arrest and service of process

Sec. 5. If a person comes into this State in obedience to a summons directing him to attend and testify in this State he shall not while in this State pursuant to such summons be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this State under the summons.

If a person passes through this State while going to another State in obedience to a summons to attend and testify in that State or while returning therefrom, he shall not while so passing through this State be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this State under the summons.

CHAPTER TWENTY-FIVE

SERVICE OF A COPY OF THE INDICTMENT

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25.04 In misdemeanor.

Article 25.01 [487] [551] [540] In felony

In every case of felony, when the accused is in custody, or as soon as he may be arrested, the clerk of the court where an indictment has been presented shall immediately make a certified copy of the same, and deliver such copy to the sheriff, together with a writ directed to such sheriff, commanding him forthwith to deliver such certified copy to the accused.

Art. 25.02 [488] [552] [541] Service and return

Upon receipt of such writ and copy, the sheriff shall immediately deliver such certified copy of the indictment to the accused and return the writ to the clerk issuing the same, with his return thereon, showing when and how the same was executed.

Art. 25.03 [489] [553] [542] If on bail in felony

When the accused, in case of felony, is on bail at the time the indictment is presented, it is not necessary to serve him with a copy, but the clerk shall on request deliver a copy of the same to the accused or his counsel, at the earliest possible time.

Art. 25.04 [490] [554] [543] In misdemeanor

In misdemeanors, it shall not be necessary before trial to furnish the accused with a copy of the indictment or information; but he or his counsel may demand a copy, which shall be given as early as possible.

CHAPTER TWENTY-SIX

ARRAIGNMENT

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Article 26.01 [491] [555] [544] Arraignment

In all felony cases, after indictment, and all misdemeanor cases punishable by imprisonment, there shall be an arraignment.

Art. 26.02 [492] [556] [545] Purpose of arraignment

An arraignment takes place for the purpose of fixing his identity and hearing his plea.

Art. 26.03 [493] [557] [546] Time of arraignment

No arraignment shall take place until the expiration of at least two entire days after the day on which a copy of the indictment was served on the defendant, unless the right to such copy or to such delay by waived, or unless the defendant is on bail.

Art. 26.04 [494] [558] [547] Court shall appoint counsel

(a) Whenever the court determines at an arraignment or at any time prior to arraignment that an accused charged with a felony or a misdemeanor punishable by imprisonment is too poor to employ counsel, the court shall appoint one or more practicing attorneys to defend him. In making the determination, the court shall require the accused to file an affidavit, and may call witnesses and hear any relevant testimony or other evidence.

(b) The appointed counsel is entitled to ten days to prepare for trial, but may waive the time by written notice, signed by the counsel and the accused.

Art. 26.05 [494a] Compensation of counsel appointed to defend

Sec. 1. A counsel appointed to defend a person accused of a felony or a misdemeanor punishable by imprisonment shall be paid from the general fund of the county in which the prosecution was instituted according to the following schedule:

(a) For each day in trial court representing the accused, a fee of not less than $25.00 nor more than $50.00;

(b) For each day in trial court representing the accused when the State has made known that it will seek the death penalty, a fee of not less than $25.00 nor more than $100.00;

(c) For expenses incurred for purposes of investigation and expert testimony, not more than $250.00;

(d) For the prosecution to a final conclusion of a bona fide appeal to the Court of Criminal Appeals, a fee of not less than $100.00 nor more than $250.00;

(e) For the prosecution to a final conclusion of a bona fide appeal to the Court of Criminal Appeals in a case where the death penalty has been assessed, a fee of not less than $100.00 nor more than $500.00.

Sec. 2. The minimum fee will be automatically allowed unless the trial judge orders more within five days of the judgment.

Sec. 3. All payments made under the provisions of this Article may be included as costs of court.

Sec. 4. An attorney may not receive more than one fee for each day in court, regardless of the number of cases in which he appears as appointed counsel on the same day.

Art. 26.06 [494b] Elected officials not to be appointed

No court may appoint an elected county, district or state official to represent a person accused of crime, unless the official has notified the court of his availability for appointment. If an official has notified the court of his availability and is appointed as counsel, he may decline the appointment if he determines that it is in the best interest of his office to do so. Nothing in this Code shall modify any statutory provision for legislative continuance.

Art. 26.07 [495] [559] [548] Name as stated in indictment

When the defendant is arraigned, his name, as stated in the indictment, shall be distinctly called; and unless he suggest by himself or counsel that he is not indicted by his true name, it shall be taken that his name is truly set forth, and he shall not thereafter be allowed to deny the same by way of defense.

Art. 26.08 [496] [560] [549] If defendant suggests different name

If the defendant, or his counsel for him, suggests that he bears some name different from that stated in the indictment, the same shall be noted upon the minutes of the court, the indictment corrected by inserting therein the name of the defendant as suggested by himself or his counsel for him, the style of the case changed so as to give his true name, and the cause proceed as if the true name had been first recited in the indictment.

Art. 26.09 [497] [561] [550] If accused refuses to give his real name

If the defendant alleges that he is not indicted by his true name, and refuses to say what his real name is, the cause shall proceed as if the name stated in the indictment were true; and the defendant shall not be allowed to contradict the same by way of defense.

Art. 26.10 [498] [562] [551] Where name is unknown

A defendant described as a person whose name is unknown may have the indictment so corrected as to give therein his true name.

Art. 26.11 [499] [563] [552] Indictment read

The name of the accused having been called, if no suggestion, such as is spoken of in the four preceding Articles, be made, or being made is disposed of as before directed, the indictment shall be read, and the defendant asked whether he is guilty or not, as therein charged.

Art. 26.12 [500] [564] [553] Plea of not guilty entered

If the defendant answers that he is not guilty, such plea shall be entered upon the minutes of the court; if he refuses to answer, the plea of not guilty shall in like manner be entered.

Art. 26.13 [501] [565] [554] Plea of guilty

If the defendant pleads guilty, or enters a plea of nolo contendere he shall be admonished by the court of the consequences; and neither of such pleas shall be received unless it plainly appears that he is sane, and is uninfluenced by any consideration of fear, or by any persuasion, or delusive hope of pardon, prompting him to confess his guilt.

Art. 26.14 [502] [566] [555] Jury on plea of guilty

Where a defendant in a case of felony persists in pleading guilty or in entering a plea of nolo contendere, if the punishment is not absolutely fixed by law, a jury shall be impaneled to assess the punishment and evidence may be heard to enable them to decide thereupon, unless the defendant in accordance with Articles 1.13 or 37.07 shall have waived his right to trial by jury.

Art. 26.15 [503] [567] [556] Correcting name

In any case, the same proceedings shall be had with respect to the name of the defendant and the correction of the indictment or information as provided with respect to the same in capital cases.

CHAPTER TWENTY-SEVEN

THE PLEADING IN CRIMINAL ACTIONS

Art.
27.01 Indictment or information.
27.02 Defendant's pleadings.
27.03 Motion to set aside indictment.
27.04 Motion tried by judge.
27.05 Special pleas for defendant.
27.06 Special plea verified.
27.07 Special plea tried.
27.08 Exception to substance of indictment.
27.09 Exception to form of indictment.
27.10 Written pleadings.
27.11 Ten days allowed for filing pleadings.
27.12 Time after service.
27.13 Plea of guilty or nolo contendere in felony.
27.14 Plea of guilty or nolo contendere in misdemeanor.
27.15 Change of venue to plead guilty.
27.16 Plea of not guilty, how made.
27.17 Plea of not guilty construed.

Article 27.01 [504] [568] [557] Indictment or information

The primary pleading in a criminal action on the part of the State is the indictment or information.

Art. 27.02 [505] [569] [558] Defendant's pleadings

On the part of the defendant, the following are the only pleadings:

1. The motion to set aside the indictment or information;

2. A special plea setting forth one or more facts as cause why the defendant ought not to be tried upon the accusation presented against him;

3. An exception to the indictment or information for some matter of form or substance;

4. A plea of guilty;

5. A plea of not guilty;

6. A plea of nolo contendere. The legal effect of such plea shall be the same as that of a plea of guilty, but the plea may not be used against the defendant as an admission in any civil suit based upon or growing out of the act upon which the criminal prosecution is based; and

7. Defendant's application for probation, if any.

Art. 27.03 [506] [570] [559] Motion to set aside indictment

In addition to any other grounds authorized by law, a motion to set aside an indictment or information may be based on the following:

1. That it appears by the records of the court that the indictment was not found by at least nine grand jurors, or that the information was not based upon a valid complaint;

2. That some person not authorized by law was present when the grand jury was deliberating upon the accusation against the defendant, or was voting upon the same; and

3. That the grand jury was illegally impaneled; provided, however, in order to raise such question on motion to set aside the indictment, the defendant must show that he did not have an opportunity to challenge the array at the time the grand jury was impaneled.

Art. 27.04 [507] [571] [560] Motion tried by judge

An issue of fact arising upon a motion to set aside an indictment or information shall be tried by the judge without a jury.

Art. 27.05 [508] [572] [561] Special pleas for defendant

The only special pleas which can be heard for the defendant are:

1. That he has been convicted legally, in a court of competent jurisdiction, upon the same accusation, after having been tried upon the merits for the same offense; and

2. That he has been before acquitted of the accusation against him, in a court of competent jurisdiction, whether the acquittal was regular or irregular.

Art. 27.06 [509] [573] [562] Special plea verified

Every special plea shall be verified by the affidavit of the defendant.

Art. 27.07 [510] [574] [563] Special plea tried

All issues of fact presented by a special plea shall be tried by the trier of the facts on the trial on the merits.

Art. 27.08 [511] [575] [564] Exception to substance of indictment

There is no exception to the substance of an indictment or information except:

1. That it does not appear therefrom that an offense against the law was committed by the defendant;

2. That it appears from the face thereof that a prosecution for the offense is barred by a lapse of time, or that the offense was committed after the finding of the indictment;

3. That it contains matter which is a legal defense or bar to the prosecution; and

4. That it shows upon its face that the court trying the case has no jurisdiction thereof.

Art. 27.09 [512] [576] [565] Exception to form of indictment

Exceptions to the form of an indictment or information may be taken for the following causes only:

1. That it does not appear to have been presented in the proper court as required by law;

2. The want of any requisite prescribed by Articles 21.02 and 21.21.

3. That it was not returned by a lawfully chosen or empaneled grand jury.

Art. 27.10 [513] [577] [566] Written pleadings

All motions to set aside an indictment or information and all special pleas and exceptions shall be in writing.

Art. 27.11 [514] [578] [567] Ten days allowed for filing pleadings

In all cases the defendant shall be allowed ten entire days, exclusive of all fractions of a day after his arrest, and during the term of the court, to file written pleadings.

Art. 27.12 [515] [579] [568] Time after service

In cases where the defendant is entitled to be served with a copy of the indictment, he shall be allowed the ten days time mentioned in the preceding Article to file written pleadings after such service.

Art. 27.13 [517] [581] [570] Plea of guilty or nolo contendere in felony

A plea of "guilty" or a plea of "nolo contendere" in a felony case must be made in open court by the defendant in person; and the proceedings shall be as provided in Articles 26.13, 26.14 and 27.02. If the plea is before the judge alone, same may be made in the same manner as is provided for by Articles 1.13 and 1.15.

Art. 27.14 [518] [582] [571] Plea of guilty or nolo contendere in misdemeanor

A plea of "guilty" or a plea of "nolo contendere" in a misdemeanor case may be made either by the defendant or his counsel in open court; in such case, the defendant or his counsel may waive a jury, and the punishment may be assessed by the court either upon or without evidence, at the discretion of the defendant. In a misdemeanor case arising out of a moving traffic violation for which the maximum possible punishment is by fine only, payment of a fine, or an amount accepted by the court constitutes a finding of guilty in open

court, as though a plea of nolo contendere had been entered by the defendant.

Art. 27.15 [519] Change of venue to plead guilty

When in any county which is located in a judicial district composed of more than one county, a party is charged with a felony and the maximum punishment therefor shall not exceed fifteen years, and the district court of said county is not in session, such party may, if he desires to plead guilty, or enter a plea of nolo contendere, make application to the district judge of such district for a change of venue to the county in which said court is in session, and said district judge may enter an order changing the venue of said cause to the county in which the court is then in session, and the defendant may plead guilty or enter a plea of nolo contendere to said charge in said court to which the venue has been changed.

Art. 27.16 [520] [584] [573] Plea of not guilty, how made

The plea of not guilty may be made orally by the defendant or by his counsel in open court. If the defendant refuses to plead, the plea of not guilty shall be entered for him by the court.

Art. 27.17 [521] [585] [574] Plea of not guilty construed

The plea of not guilty shall be construed to be a denial of every material allegation in the indictment or information. Under this plea, evidence to establish the insanity of defendant, and every fact whatever tending to acquit him of the accusation may be introduced, except such facts as are proper for a special plea under Article 27.05.

CHAPTER TWENTY-EIGHT

MOTIONS, PLEADINGS AND EXCEPTIONS

Art.

28.01 Pre-trial.
28.02 Order of argument.
28.03 Process for testimony on pleadings.
28.04 Quashing charge in misdemeanor.
28.05 Quashing indictment in felony.
28.06 Shall be fully discharged, when.
28.07 If exception is that no offense is charged.
28.08 When defendant is held by order of court.
28.09 Exception on account of form.
28.10 Amendment of indictment or information.
28.11 How amended.
28.12 Exception and trial of special pleas.
28.13 Former acquittal or conviction.
28.14 Plea allowed.

Article 28.01 [522] [587] [576] Pre-trial

Sec. 1. The court may set any criminal case for a pre-trial hearing before it is set for trial upon its merits, and direct the defendant and his attorney, if any of record, and the State's attorney, to appear before the court at the time and place stated in the court's order for a conference and hearing. The defendant must be present at the arraignment, and his presence is required during any pre-trial proceeding. The pre-trial hearing shall be to determine any of the following matters:

(1) Arraignment of the defendant, if such be necessary; and appointment of counsel to represent the defendant, if such be necessary;

(2) Pleadings of the defendant;

(3) Special pleas, if any;

(4) Exceptions to the form or substance of the indictment or information;

(5) Motions for continuance either by the State or defendant; provided that grounds for continuance not existing or not known at the time may be presented and considered at any time before the defendant announces ready for trial;

(6) Motions to suppress evidence—When a hearing on the motion to suppress evidence is granted, the court may determine the merits of said motion on the motions themselves, or upon opposing affidavits, or upon oral testimony, subject to the discretion of the court;

(7) Motions for change of venue by the State or the defendant; provided, however, that such motions for change of venue, if overruled at the pre-trial hearing, may be renewed by the State or the defendant during the voir dire examination of the jury; and

(8) Discovery.

Sec. 2. When a criminal case is set for such pre-trial hearing, the defendant shall have five days after notice of setting in which to file his motions, pleadings and exceptions; and any such preliminary matters not raised and filed within the time allowed will not thereafter be allowed to be raised or filed, except by permission of the court for good cause shown. The record made at such pre-trial hearing, the rulings of the court and the exceptions and objections thereto shall become a part of the trial record of the case upon its merits.

Art. 28.02 [524] [589] [578] Order of argument

The counsel of the defendant has the right to open and conclude the argument upon all pleadings of the defendant presented for the decision of the judge.

Art. 28.03 [526] [591] [580] Process for testimony on pleadings

When the matters involved in any written pleading depend in whole or in part upon testimony, and not altogether upon the record of the court, every process known to the law may be obtained on be-

half of either party to procure such testimony; but there shall be no delay on account of the want of the testimony, unless it be shown to the satisfaction of the court that all the means given by the law have been used to procure the same.

Art. 28.04 [527] [592] [581] Quashing charge in misdemeanor

If the motion to set aside or the exception to an indictment or information is sustained, the defendant in a misdemeanor case shall be discharged, but may be again prosecuted within the time allowed by law.

Art. 28.05 [528] [593] [582] Quashing indictment in felony

If the motion to set aside or the exception to the indictment in cases of felony be sustained, the defendant shall not therefor be discharged, but may immediately be recommitted by order of the court, upon motion of the State's attorney or without motion; and proceedings may afterward be had against him as if no prosecution had ever been commenced.

Art. 28.06 [529] [594] [583] Shall be fully discharged, when

Where, after the motion or exception is sustained, it is made known to the court by sufficient testimony that the offense of which the defendant is accused will be barred by limitation before another indictment can be presented, he shall be fully discharged.

Art. 28.07 [530] [595] [584] If exception is that no offense is charged

If an exception to an indictment or information is taken and sustained upon the ground that there is no offense against the law charged therein, the defendant shall be discharged, unless an affidavit be filed accusing him of the commission of a penal offense.

Art. 28.08 [531] [596] [585] When defendant is held by order of court

If the motion to set aside the indictment or any exception thereto is sustained, but the court refuses to discharge the defendant, then at the expiration of ten days from the order sustaining such motions or exceptions, the defendant shall be discharged, unless in the meanwhile complaint has been made before a magistrate charging him with an offense, or unless another indictment has been presented against him for such offense.

Art. 28.09 [532] [597] [586] Exception on account of form

If the exception to an indictment or information is only on account of form, it shall be amended, if defective, and the cause proceed upon such amended charge.

Art. 28.10 [533] [598] [587] Amendment of indictment or information

Any matter of form in an indictment or information may be amended at any time before an announcement of ready for trial upon the merits by both parties, but not afterward. No matter of substance can be amended.

Art. 28.11 [534] [599] [588] How amended

All amendments of an indictment or information shall be made with the leave of the court and under its direction.

Art. 28.12 [525, 535] [590, 600] [579, 589] Exception and trial of special pleas

When a special plea is filed by the defendant, the State may except to it for substantial defects. If the exception be sustained, the plea may be amended. If the plea be not excepted to, it shall be considered that issue has been taken upon the same. Such special pleas as set forth matter of fact proper to be tried by a jury shall be submitted and tried with a plea of not guilty.

Art. 28.13 [536] [601] [590] Former acquittal or conviction

A former judgment of acquittal or conviction in a court of competent jurisdiction shall be a bar to any further prosecution for the same offense, but shall not bar a prosecution for any higher grade of offense over which said court had not jurisdiction, unless such judgment was had upon indictment or information, in which case the prosecution shall be barred for all grades of the offense.

Art. 28.14 [537] [602] [591] Plea allowed

Judgment shall, in no case, be given against the defendant where his motion, exception or plea is overruled; but in all cases the plea of not guilty may be made by or for him.

CHAPTER TWENTY-NINE

CONTINUANCE

Art.
29.01 By operation of law.
29.02 By agreement.
29.03 For sufficient cause shown.
29.04 First motion by State.
29.05 Subsequent motion by State.
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29.07 Subsequent motion by defendant.
29.08 Motion sworn to.
29.09 Controverting motion.
29.10 When denial is filed.

Art.
29.11 Argument.
29.12 Bail resulting from continuance.
29.13 Continuance after trial is begun.

Article 29.01 [538] [603] [592] By operation of law

Criminal actions are continued by operation of law if the accused has not been arrested or if there is not sufficient time for trial at that term of court.

Art. 29.02 [539] [604] [593] By agreement

A criminal action may be continued by consent of the parties thereto, in open court, at any time.

Art. 29.03 [540] [605] [594] For sufficient cause shown

A criminal action may be continued on the written motion of the State or of the defendant, upon sufficient cause shown; which cause shall be fully set forth in the motion.

Art. 29.04 [541] [606] [595] First motion by State

It shall be sufficient, upon the first motion by the State for a continuance, if the same be for the want of a witness, to state:

1. The name of the witness and his residence, if known, or that his residence is unknown;

2. The diligence which has been used to procure his attendance; and it shall not be considered sufficient diligence to have caused to be issued, or to have applied for, a subpoena, in cases where the law authorized an attachment to issue; and

3. That the testimony of the witness is believed by the applicant to be material for the State.

Art. 29.05 [542] [607] [596] Subsequent motion by State

On any subsequent motion for a continuance by the State, for the want of a witness, the motion, in addition to the requisites in the preceding Article, must show:

1. The facts which the applicant expects to establish by the witness, and it must appear to the court that they are material;

2. That the applicant expects to be able to procure the attendance of the witness at the next term of the court; and

3. That the testimony cannot be procured from any other source during the present term of the court.

Art. 29.06 [543] [608] [597] First motion by defendant

In the first motion by the defendant for a continuance, it shall be necessary, if the same be on account of the absence of a witness, to state:

1. The name of the witness and his residence, if known, or that his residence is not known.

2. The diligence which has been used to procure his attendance; and it shall not be considered sufficient diligence to have caused to be issued, or to have applied for, a subpoena, in cases where the law authorized an attachment to issue.

3. The facts which are expected to be proved by the witness, and it must appear to the court that they are material.

4. That the witness is not absent by the procurement or consent of the defendant.

5. That the motion is not made for delay.

6. That there is no reasonable expectation that attendance of the witness can be secured during the present term of court by a postponement of the trial to some future day of said term. The truth of the first, or any subsequent motion, as well as the merit of the ground set forth therein and its sufficiency shall be addressed to the sound discretion of the court called to pass upon the same, and shall not be granted as a matter of right. If a motion for continuance be overruled, and the defendant convicted, if it appear upon the trial that the evidence of the witness or witnesses named in the motion was of a material character, and that the facts set forth in said motion were probably true, a new trial should be granted, and the cause continued or postponed to a future day of the same term.

Art. 29.07 [544] [609] [598] Subsequent motion by defendant

Subsequent motions for continuance on the part of the defendant shall, in addition to the requisites in the preceding Article, state also:

1. That the testimony cannot be procured from any other source known to the defendant; and

2. That the defendant has reasonable expectation of procuring the same at the next term of the court.

Art. 29.08 [545] [610] [599] Motion sworn to

All motions for continuance on the part of the defendant must be sworn to by himself.

Art. 29.09 [547] [612] [601] Controverting motion

Any material fact stated, affecting diligence, in a motion for a continuance, may be denied in writing by the adverse party. The denial shall be supported by the oath of some credible person, and filed as soon as practicable after the filing of such motion.

Art. 29.10 [548] [613] [602] When denial is filed

When such denial is filed, the issue shall be tried by the judge; and he shall hear testimony by affidavits, and grant or refuse continuance, according to the law and facts of the case.

Art. 29.11 [549] [614] [603] Argument

No argument shall be heard on a motion for a continuance, unless requested by the judge; and when argument is heard, the applicant shall have the right to open and conclude it.

Art. 29.12 [550] [615] [604] Bail resulting from continuance

If a defendant in a capital case demand a trial, and it appears that more than one continuance has been granted to the State, and that the defendant has not before applied for a continuance, he shall be entitled to be admitted to bail, unless it be made to appear to the satisfaction of the court that a material witness of the State had been prevented from attendance by the procurement of the defendant or some person acting in his behalf.

Art. 29.13 [551] [616] [605] Continuance after trial is begun

A continuance or postponement may be granted on the motion of the State or defendant after the trial has begun, when it is made to appear to the satisfaction of the court that by some unexpected occurrence since the trial began, which no reasonable diligence could have anticipated, the applicant is so taken by surprise that a fair trial cannot be had.

CHAPTER THIRTY

DISQUALIFICATION OF THE JUDGE

Art.
30.01 Causes which disqualify.
30.02 District judge disqualified.
30.03 County judge disqualified.
30.04 Special judge to take oath.
30.05 Record made by clerk.
30.06 Compensation.
30.07 Justice disqualified.
30.08 Order of transfer.

Article 30.01 [552] [617] [606] Causes which disqualify

No judge or justice of the peace shall sit in any case where he may be the party injured, or where he has been of counsel for the State or the accused, or where the accused or the party injured may be connected with him by consanguinity or affinity within the third degree.

Art. 30.02 [553] [618] [607] District judge disqualified

Whenever any case is pending in which the district judge or criminal district judge is disqualified from trying the case, no change of venue shall be made necessary thereby; but the judge presiding shall certify that fact to the presiding judge of the administrative

judicial district in which the case is pending and the presiding judge of such administrative judicial district shall assign a judge to try such case in accordance with the provisions of Article 200a, V.A.C.S.

Art. 30.03 [554] [621] County judge disqualified

When the judge of the county court or county court at law, or of any county criminal court, is disqualified in any criminal case pending in the court of which he is judge, the parties may by consent agree upon a special judge to try such case. If they fail to agree upon a special judge to try such case, on or before the third day of the term at which such case may be called for trial, the practicing attorneys of the court present may elect from among their number a special judge who shall try the case. The election of the special judge shall be conducted in accordance with the provisions of Article 1887, et seq., V.A.C.S.

Art. 30.04 [555] [620–622] Special judge to take oath

The attorney agreed upon or appointed shall, before he enters upon his duties as special judge, take the oath of office required by the Constitution.

Art. 30.05 [556] [620–622] Record made by clerk

When a special judge is agreed upon by the parties or elected as herein provided, the clerk shall enter in the minutes as a part of the proceedings in such cause a record showing:

1. That the judge of the court was disqualified to try the cause;

2. That such special judge (naming him) was by consent of the parties agreed upon or elected;

3. That the oath of office prescribed by law has been duly administered to such special judge.

Art. 30.06 [557] [623] [610b] Compensation

A special judge selected or appointed in accordance with the preceding Articles shall receive the same compensation as provided by law for regular judges in similar cases.

Art. 30.07 [558] [624] [611] Justice disqualified

If a justice of the peace be disqualified from sitting in any criminal action pending before him, he shall transfer the same to any justice of the peace in the county who is not disqualified to try the case.

Art. 30.08 [559] [625] [612] Order of transfer

In cases provided for in the preceding Article, the order of transfer shall state the cause of the transfer, and name the court to which the transfer is made, and the time and place, when and where, the parties and witnesses shall appear before such court. The rules governing the transfer of cases from the district to inferior courts shall govern in the transfer of cases under the preceding Article.

CHAPTER THIRTY-ONE

CHANGE OF VENUE

Art.
31.01 On court's own motion.
31.02 State may have.
31.03 Granted on motion of defendant.
31.04 Motion may be controverted.
31.05 Clerk's duties on change of venue.
31.06 If defendant be in custody.
31.07 Witness need not again be summoned.

Article 31.01 [560] [626] [613] On court's own motion

Whenever in any case of felony or misdemeanor punishable by confinement, the judge presiding shall be satisfied that a trial, alike fair and impartial to the accused and to the State, cannot, from any cause, be had in the county in which the case is pending, he may, upon his own motion, after due notice to accused and the State, and after hearing evidence thereon, order a change of venue to any county in the judicial district in which such county is located or in an adjoining district, stating in his order the grounds for such change of venue. The judge, upon his own motion, after ten days notice to the parties or their counsel, may order a change of venue to any county beyond an adjoining district; provided, however, an order changing venue to a county beyond an adjoining district shall be grounds for reversal if, upon timely contest by the defendant, the record of the contest affirmatively shows that any county in his own and the adjoining district is not subject to the same conditions which required the transfer.

Art. 31.02 [561] [627] [614] State may have

Whenever the district or county attorney shall represent in writing to the court before which any felony or misdemeanor case punishable by confinement, is pending, that, by reason of existing combinations or influences in favor of the accused, or on account of the lawless condition of affairs in the county, a fair and impartial trial as between the accused and the State cannot be safely and speedily had; or whenever he shall represent that the life of the prisoner, or of any witness, would be jeopardized by a trial in the county in which the case is pending, the judge shall hear proof in relation thereto, and if satisfied that such representation is well-founded and that the ends of public justice will be subserved thereby, he shall order a change of venue to any county in the judicial district in which such county is located or in an adjoining district.

Art. 31.03 [562] [628] [615] Granted on motion of defendant

A change of venue may be granted in any felony or misdemeanor case punishable by confinement on the written motion of the defend-

ant, supported by his own affidavit and the affidavit of at least two credible persons, residents of the county where the prosecution is instituted, for either of the following causes, the truth and sufficiency of which the court shall determine:

1. That there exists in the county where the prosecution is commenced so great a prejudice against him that he cannot obtain a fair and impartial trial; and

2. That there is a dangerous combination against him instigated by influential persons, by reason of which he cannot expect a fair trial.

An order changing venue to a county beyond an adjoining district shall be grounds for reversal, if upon timely contest by defendant, the record of the contest affirmatively shows that any county in his own and the adjoining district is not subject to the same conditions which required the transfer.

Art. 31.04 [567] [633] [620] Motion may be controverted

The credibility of the persons making affidavit for change of venue, or their means of knowledge, may be attacked by the affidavit of a credible person. The issue thus formed shall be tried by the judge, and the motion granted or refused, as the law and facts shall warrant.

Art. 31.05 [570] [635–636] Clerk's duties on change of venue

Where an order for a change of venue of any court in any criminal cause in this State has been made the clerk of the court where the prosecution is pending shall make out a certified copy of the court's order directing such change of venue, together with a certified copy of the defendant's bail bond or personal bond, together with all the original papers in said cause and also a certificate of the said clerk under his official seal that such papers are the papers and all the papers on file in said court in said cause; and he shall transmit the same to the clerk of the court to which the venue has been changed.

Art. 31.06 [573] [639] [626] If defendant be in custody

When the venue is changed in any criminal action if the defendant be in custody, an order shall be made for his removal to the proper county, and his delivery to the sheriff thereof before the next succeeding term of the court of the county to which the case is to be taken, and he shall be delivered by the sheriff as directed in the order.

Art. 31.07 [575] [641] [628] Witness need not again be summoned

When the venue in a criminal action has been changed, it shall not be necessary to have the witnesses therein again subpoenaed, attached or bailed, but all the witnesses who have been subpoenaed, attached or bailed to appear and testify in the cause shall be held bound to appear before the court to which the cause has been transferred, as if there had been no such transfer.

TRIAL AND ITS INCIDENTS

CHAPTER THIRTY-TWO

DISMISSING PROSECUTIONS

Art.
32.01 Defendant in custody and no indictment presented.
32.02 Dismissal by State's attorney.

Article 32.01 [576] [642] [629] Defendant in custody and no indictment presented

When a defendant has been detained in custody or held to bail for his appearance to answer any criminal accusation before the district court, the prosecution, unless otherwise ordered by the court, for good cause shown, supported by affidavit, shall be dismissed and the bail discharged, if indictment or information be not presented against such defendant at the next term of the court which is held after his commitment or admission to bail.

Art. 32.02 [577] [37, 643] [37, 630] Dismissal by State's attorney

The attorney representing the State may, by permission of the court, dismiss a criminal action at any time upon filing a written statement with the papers in the case setting out his reasons for such dismissal, which shall be incorporated in the judgment of dismissal. No case shall be dismissed without the consent of the presiding judge.

CHAPTER THIRTY-THREE

THE MODE OF TRIAL

Art.
33.01 Jury; when of twelve, when of six.
33.02 Failure to register or pay poll tax.
33.03 Presence of defendant.
33.04 May appear by counsel.
33.05 On bail during trial.
33.06 Sureties bound in case of mistrial.
33.07 Criminal docket.
33.08 To fix day for criminal docket.
33.09 Jury drawn.

Article 33.01 [578] [645] [632] Jury; when of twelve, when of six

In the district court, the jury shall consist of twelve qualified jurors; in the county court and inferior courts, the jury shall consist of six qualified jurors.

Art. 33.02 [579] Failure to register or pay poll tax

Failure to pay poll tax or register to vote shall not disqualify any person from jury service.

Art. 33.03 [580] [646] [633] Presence of defendant

In all prosecutions for felonies, the defendant must be personally present at the trial, and he must likewise be present in all cases of misdemeanor when the punishment or any part thereof is imprisonment in jail; provided, however, that in all cases, when the defendant voluntarily absents himself after pleading to the indictment or information, the trial may proceed to its conclusion. When the record in the appellate court shows that the defendant was present at the commencement, or any portion of the trial, it shall be presumed in the absence of all evidence in the record to the contrary that he was present during the whole trial. Provided, however, that the presence of the defendant shall not be required at the hearing on the motion for new trial in any misdemeanor case.

Art. 33.04 [581] [647] [634] May appear by counsel

In other misdemeanor cases, the defendant may, by consent of the State's attorney, appear by counsel, and the trial may proceed without his personal presence.

Art. 33.05 [582] [648–900] On bail during trial

If the defendant is on bail when the trial commences, such bail shall be considered as discharged if he is acquitted. If a verdict of guilty is returned against him, the discharge of his bail shall be governed by other provisions of this Code.

Art. 33.06 [583] [649] [636] Sureties bound in case of mistrial

If there be a mistrial in a felony case, the original sureties, if any, of the defendant shall be still held bound for his appearance until they surrender him in accordance with the provisions of this Code.

Art. 33.07 [584] [650] [637] Criminal docket

Each clerk of a court of record having criminal jurisdiction shall keep a docket in which shall be set down the style and file number of each criminal action, the nature of the offense, the names of counsel, the proceedings had therein, and the date of each proceeding.

Art. 33.08 [585, 586] [651, 652] [638, 639] To fix day for criminal docket

The district courts and county courts shall have control of their respective dockets as to the settings of criminal cases.

Art. 33.09 [591, 626] [660, 647] Jury drawn

Jury panels, including special venires, for the trial of criminal cases shall be selected and summoned (with return on summons) in the same manner as the selection of panels for the trial of civil cases except as otherwise provided in this Code.

CHAPTER THIRTY-FOUR

SPECIAL VENIRE IN CAPITAL CASES

Art.
34.01 Special venire.
34.02 Additional names drawn.
34.03 Instructions to sheriff.
34.04 Notice of list.

Article 34.01 [587, 597, 601a] [655, 668] [642, 650] Special venire

A "special venire" is a writ issued in a capital case by order of the district court, commanding the sheriff to summon either verbally or by mail such a number of persons, not less than 50, as the court may order, to appear before the court on a day named in the writ from whom the jury for the trial of such case is to be selected. Where as many as one hundred jurors have been summoned in such county for regular service for the week in which such capital case is set for trial, the judge of the court having jurisdiction of a capital case in which a motion for a special venire has been made, shall grant or refuse such motion for a special venire, and upon such refusal require the case to be tried by regular jurors summoned for service in such county for the week in which such capital case is set for trial and such additional talesmen as may be summoned by the sheriff upon order of the court as provided in Article 34.02 of this Code, but the clerk of such court shall furnish the defendant or his counsel a list of the persons summoned as provided in Article 34.04.

Art. 34.02 [596] [667] [649] Additional names drawn

In any criminal case in which the court deems that the veniremen theretofore drawn will be insufficient for the trial of the case, or in any criminal case in which the venire has been exhausted by challenge or otherwise, the court shall order additional veniremen in such numbers as the court may deem advisable, to be summoned as follows:

(a) In a jury wheel county, the names of those to be summoned shall be drawn from the jury wheel.

(b) In counties not using the jury wheel, the veniremen shall be summoned by the sheriff.

Art. 34.03 Instructions to sheriff

When the sheriff is ordered by the court to summon persons upon a special venire whose names have not been selected under the Jury Wheel Law, the court shall, in every case, caution and direct the sheriff to summon such persons as have legal qualifications to serve on juries, informing him of what those qualifications are, and shall direct him, as far as he may be able to summon persons of good character who can read and write, and such as are not prejudiced against the defendant or biased in his favor, if he knows of such bias or prejudice.

Art. 34.04 [601] [672] [654] Notice of list

No defendant in a capital case shall be brought to trial until he shall have had at least two days (including holidays) a copy of the names of the persons summoned as veniremen, for the week for which his case is set for trial except where he waives the right or is on bail. When such defendant is on bail, the clerk of the court in which the case is pending shall furnish such a list to the defendant or his counsel at least two days prior to the trial (including holidays) upon timely motion by the defendant or his counsel therefor at the office of such clerk, and the defendant shall not be brought to trial until such list has been furnished defendant or his counsel for at least two days (including holidays). Where the venire is exhausted, by challenges or otherwise, and additional names are drawn, the defendant shall not be entitled to two days service of the names additionally drawn, but the clerk shall compile a list of such names promptly after they are drawn and if the defendant is not on bail, the sheriff shall serve a copy of such list promptly upon the defendant, and if on bail, the clerk shall furnish a copy of such list to the defendant or his counsel upon request, but the proceedings shall not be delayed thereby.

CHAPTER THIRTY-FIVE

FORMATION OF THE JURY

Art.

35.01 Jurors called.
35.02 Sworn to answer questions.
35.03 Excuses.
35.04 Claiming exemption.
35.05 Excused by consent.
35.06 Challenge to array first heard.
35.07 Challenge to the array.
35.08 When challenge is sustained.
35.09 List of new venire.
35.10 Court to try qualifications.

Art.
35.11 Preparation of list.
35.12 Mode of testing.
35.13 Passing juror for challenge.
35.14 A peremptory challenge.
35.15 Number of challenges.
35.16 Reasons for challenge for cause.
35.17 Voir dire examination.
35.18 Other evidence on challenge.
35.19 Absolute disqualification.
35.20 Names called in order.
35.21 Judge to decide qualifications.
35.22 Oath to jury.
35.23 Jurors may separate.
35.24 Special pay for veniremen.
35.25 Making peremptory challenge.
35.26 Lists returned to clerk.
35.27 Witness fees.
35.28 When no clerk.

Article 35.01 [602] [673] [655] Jurors called

When a case is called for trial and the parties have announced ready for trial, the names of those summoned as jurors in the case shall be called. Those not present may be fined not exceeding fifty dollars. An attachment may issue on request of either party for any absent summoned juror, to have him brought forthwith before the court. A person who is summoned but not present, may upon an appearance, before the jury is qualified, be tried as to his qualifications and impaneled as a juror unless challenged, but no cause shall be unreasonably delayed on account of his absence.

Art. 35.02 [603] [674] [656] Sworn to answer questions

To those present the court shall cause to be administered this oath: "You, and each of you, solemnly swear that you will make true answers to such questions as may be propounded to you by the court, or under its directions, touching your service and qualifications as a juror, so help you God."

Art. 35.03 [604] [675] [657] Excuses

The court shall then hear and determine excuses offered for not serving as a juror, and if he deems the excuse sufficient, he shall discharge the juror.

Art. 35.04 [605] [676] Claiming exemption

Any person summoned as a juror who is exempt by law from jury service, may, if he desires to claim his exemption, make an affidavit stating his exemption, and file it any time before the convening of said court with the clerk thereof, which shall be sufficient excuse with-

out appearing in person. The affidavit may be sworn to before the officer summoning each juror.

Art. 35.05 [606] [677] [658] Excused by consent

One summoned upon a special venire may by consent of both parties be excused from attendance by the court at any time before he is impaneled.

Art. 35.06 [607] [678] [659] Challenge to array first heard

The court shall hear and determine a challenge to the array before interrogating those summoned as to their qualifications.

Art. 35.07 [608] [679-683] Challenge to the array

Each party may challenge the array only on the ground that the officer summoning the jury has wilfully summoned jurors with a view to securing a conviction or an acquittal. All such challenges must be in writing setting forth distinctly the grounds of such challenge. When made by the defendant, it must be supported by his affidavit or the affidavit of any credible person. When such challenge is made, the judge shall hear evidence and decide without delay whether or not the challenge shall be sustained.

Art. 35.08 [609] [684] [665] When challenge is sustained

The array of jurors summoned shall be discharged if the challenge be sustained, and the court shall order other jurors to be summoned in their stead, and direct that the officer who summoned those so discharged, and on account of whose misconduct the challenge has been sustained shall not summon any other jurors in the case.

Art. 35.09 [610] [685] [666] List of new venire

When a challenge to the array has been sustained, the defendant shall be entitled, as in the first instance, to service of a copy of the list of names of those summoned by order of the court.

Art. 35.10 [611] [686] [667] Court to try qualifications

When no challenge to the array has been made, or if made, has been over-ruled, the court shall proceed to try the qualifications of those present who have been summoned to serve as jurors.

Art. 35.11 Preparation of list

The trial judge, upon the demand of the defendant or his attorney, or of the State's counsel, shall cause the names of all the members of the general panel drawn or assigned as jurors in such case to be placed in a receptacle and well-shaken, and the clerk shall draw therefrom the names of a sufficient number of jurors from which a jury may be selected to try such case, and such names shall be writ-

ten, in the order drawn, on the jury list from which the jury is to be selected to try such case, and write the names as drawn upon two slips of paper and deliver one slip to the State's counsel and the other to the defendant or his attorney.

Art. 35.12 [612] [687] [668] Mode of testing

In testing the qualification of a prospective juror after he has been sworn, he shall be asked by the court, or under its direction:

1. Except for payment of poll tax or registration, are you a qualified voter in this county and State under the Constitution and Laws of this State?

2. Are you a householder in the county or a freeholder in the State or the wife of such householder?

3. Have you ever been convicted of theft or any felony?

4. Are you under indictment or legal accusation for theft or any felony?

Art. 35.13 [613] [688–689] Passing juror for challenge

A juror held to be qualified shall be passed for acceptance or challenge first to the State and then to the defendant. Challenges to jurors are either peremptory or for cause.

Art. 35.14 [614] [690] [671] A peremptory challenge

A peremptory challenge is made to a juror without assigning any reason therefor.

Art. 35.15 [615, 634, 635] [691, 709, 710] [672, 689, 690] Number of challenges

(a) In capital cases both the State and defendant shall be entitled to fifteen peremptory challenges. Where two or more defendants are tried together, the State shall be entitled to eight peremptory challenges for each defendant; and each defendant shall be entitled to eight peremptory challenges.

(b) In non-capital felony cases and in capital cases where the State has made known to the court that it will not seek the death penalty, the State and defendant shall each be entitled to ten peremptory challenges. If two or more defendants are tried together each defendant shall be entitled to six peremptory challenges and the State to six for each defendant.

(c) The State and the defendant shall each be entitled to five peremptory challenges in a misdemeanor tried in the district court and to three in the county court, or county court at law. If two or more defendants are tried together, each defendant shall be entitled to three such challenges and the State to three for each defendant in either court.

Art. 35.16 [616] [692] [673] Reasons for challenge for cause

(a) A challenge for cause is an objection made to a particular juror, alleging some fact which renders him incapable or unfit to serve on the jury. A challenge for cause may be made by either the State or the defense for any one of the following reasons:

1. That he is not a qualified voter in the State and county under the Constitution and laws of the State; provided, however, the failure to pay a poll tax or register to vote shall not be a disqualification;

2. That he is neither a householder in the county nor a freeholder in the State, nor the wife of such a householder;

3. That he has been convicted of theft or any felony;

4. That he is under indictment or other legal accusation for theft or any felony;

5. That he is insane or has such defect in the organs of seeing, feeling or hearing, or such bodily or mental defect or disease as to render him unfit for jury service;

6. That he is a witness in the case;

7. That he served on the grand jury which found the indictment;

8. That he served on a petit jury in a former trial of the same case;

9. That he has a bias or prejudice in favor of or against the defendant;

10. That from hearsay, or otherwise, there is established in the mind of the juror such a conclusion as to the guilt or innocence of the defendant as would influence him in his action in finding a verdict. To ascertain whether this cause of challenge exists, the juror shall first be asked whether, in his opinion, the conclusion so established will influence his verdict. If he answers in the affirmative, he shall be discharged without further interrogation by either party or the court. If he answers in the negative, he shall be further examined as to how his conclusion was formed, and the extent to which it will affect his action; and, if it appears to have been formed from reading newspaper accounts, communications, statements or reports or mere rumor or hearsay, and if the juror states that he feels able, notwithstanding such opinion, to render an impartial verdict upon the law and the evidence, the court, if satisfied that he is impartial and will render such verdict, may, in its discretion, admit him as competent to serve in such case. If the court, in its discretion, is not satisfied that he is impartial, the juror shall be discharged;

11. That he cannot read or write.

No juror shall be impaneled when it appears that he is subject to the third, fourth or fifth grounds of challenge for cause set forth above, although both parties may consent. All other grounds for challenge may be waived by the party or parties in whose favor such grounds of challenge exist.

(b) A challenge for cause may be made by the State for any of the following reasons:

1. That the juror has conscientious scruples in regard to the infliction of the punishment of death for crime, in a capital case, where the State is seeking the death penalty;

2. That he is related within the third degree of consanguinity or affinity to the defendant; and

3. That he has a bias or prejudice against any phase of the law upon which the State is entitled to rely for conviction or punishment.

(c) A challenge for cause may be made by the defense for any of the following reasons:

1. That he is related within the third degree of consanguinity or affinity to the person injured by the commission of the offense, or to any prosecutor in the case; and

2. That he has a bias or prejudice against any of the law applicable to the case upon which the defense is entitled to rely, either as a defense to some phase of the offense for which the defendant is being prosecuted or as a mitigation thereof or of the punishment therefor.

Art. 35.17 Voir dire examination

1. When the court in its discretion so directs, in a misdemeanor or non-capital felony case, or in a capital case in which the state's attorney has made known that he will not seek the death penalty, the state and defendant shall conduct the voir dire examination of prospective jurors in the presence of the entire panel.

2. When the state's attorney has made known that he will seek the death penalty, the court shall propound to the entire panel of prospective jurors questions concerning the principles, as applicable to the case on trial, of reasonable doubt, burden of proof, return of indictment by grand jury, presumption of innocence, and opinion. Then, on demand of the State or defendant, either is entitled to examine each juror on voir dire individually and apart from the entire panel, and may further question the juror on the principles propounded by the court.

Art. 35.18 [617] [693] [674] Other evidence on challenge

Upon a challenge for cause, the examination is not confined to the answers of the juror, but other evidence may be heard for or against the challenge.

Art. 35.19 [619] [695] [676] Absolute disqualification

No juror shall be impaneled when it appears that he is subject to the third, fourth or fifth cause of challenge in Article 35.16, though both parties may consent.

Art. 35.20 [620] [696] [677] Names called in order

In selecting the jury from the persons summoned, the names of such persons shall be called in the order in which they appear upon the list furnished the defendant. Each juror shall be tried and passed upon separately. A person who has been summoned, but who is not present, may, upon his appearance before the jury is completed, be

tried as to his qualifications and impaneled as a juror, unless challenged, but no cause shall be unreasonably delayed on account of such absence.

Art. 35.21 [621] [697] [678] Judge to decide qualifications

The court is the judge, after proper examination, of the qualifications of a juror, and shall decide all challenges without delay and without argument thereupon.

Art. 35.22 [622] [698] [679] Oath to jury

When the jury has been selected, the following oath shall be administered them by the court or under its direction: "You and each of you do solemnly swear that in the case of the State of Texas against the defendant, you will a true verdict render according to the law and the evidence, so help you God".

Art. 35.23 [623] [699] [680] Jurors may separate

The court may adjourn veniremen to any day of the term. When jurors have been sworn in a felony case, the court may, at its discretion, permit the jurors to separate until the court has given its charge to the jury, after which the jury shall be kept together, and not permitted to separate except to the extent of housing female jurors separate and apart from male jurors, until a verdict has been rendered or the jury finally discharged, unless by permission of the court with the consent of each party. Any person who makes known to the jury which party did not consent to separation shall be punished for contempt of court. If such jurors are kept overnight, facilities shall be provided for female jurors separate and apart from the facilities provided for male jurors. In misdemeanor cases the court may, at its discretion, permit the jurors to separate at any time before the verdict. In any case in which the jury is permitted to separate, the court shall first give the jurors proper instructions with regard to their conduct as jurors when so separated.

Art. 35.24 [625] [701] Special pay for veniremen

All veniremen and jurors shall be paid a per diem of not less than four dollars nor more than ten dollars per day, as fixed by the commissioners court of such county, which shall be paid out of the jury fund. No greater sum shall be paid challenged veniremen, regardless of the number of cases to which they may be summoned in any one day.

Art. 35.25 [636] [711] [691] Making peremptory challenge

In non-capital cases and in capital cases in which the State's attorney has announced that he will not qualify the jury for, or seek the death penalty, the party desiring to challenge any juror peremptorily shall strike the name of such juror from the list furnished him by the clerk.

Art. 35.26 [637] [712] [692] Lists returned to clerk

When the parties have made or declined to make their peremptory challenges, they shall deliver their lists to the clerk. The clerk shall, if the case be in the district court, call off the first twelve names on the lists that have not been stricken; and, if the case be in the county court, he shall call off the first six names on the lists that have not been stricken, those whose names are called shall be the jury.

Art. 35.27 [1036] [1138] [1003] Witness fees

(1) Any witness who has been subpoenaed, or has been attached and given bond for his appearance before any court, or before any grand jury, out of the county of his residence, to testify in a case regardless of disposition of said case, and who appears in compliance with the obligations of such subpoena or bond, shall be allowed seven cents per mile going to and returning from the court or grand jury, by the nearest practical conveyance, and ten dollars per day for each day he may necessarily be absent from home as a witness in such case.

Provided, any witness who has been subpoenaed or has been attached and given bond for his appearance before any court, out of the county of his residence, to testify in a case, and who appears in compliance with said subpoena or with the obligations of such bond, and the case in which he is a witness is reset for a later day in the same term of court, not exceeding four days, shall not be paid mileage for any additional trip to or from court he may make by reason of the resetting of said case unless permission first had and obtained from the trial judge to make said trip, but shall be entitled to receive his per diem for the additional days he may be in attendance upon court by reason of the resetting of the case.

Witnesses shall receive from the State, for attendance upon courts and grand juries in counties other than that of their residence in obedience to subpoenas issued under the provisions of law seven cents per mile, going to and returning from the court or grand jury, by the nearest practical conveyance, and ten dollars per day for each day they may necessarily be absent from home as a witness to be paid as now provided by law; and the foreman of the grand jury, or the clerk of the court shall issue such witness certificates therefor, after deducting therefrom the amounts advanced by the officers serving said subpoenas, as shown by the returns on said subpoenas; which certificates shall be approved by the judge and recorded by the clerk in a well-bound book kept for that purpose; provided, that when an indictment can be found from the evidence taken before an inquest or examining trial, no subpoena or attachment shall issue for a witness who resides out of the county in which the prosecution is pending to appear before a grand jury. When the grand jury shall certify to the judge that sufficient evidence cannot be secured upon which to find an indictment, except upon testimony of non-resident witnesses, the judge may have subpoenas issued as provided for by law to other counties for witnesses to testify before the grand jury, not to exceed one witness to any one fact, nor more than three witnesses to any one case pending before the grand jury.

(2) Witness fees shall be allowed only to such witnesses as may have been summoned on the sworn written motion of the State's attorney or the defendant or his attorney as provided in this Code, which sworn motion must be made at the time of the procuring of the subpoena or attachment for the witness. The judge to whom a motion for attachment is made may, in his discretion, grant or refuse such motion, when presented in term-time.

(3) The witness shall make an affidavit stating the number of miles he will have traveled going to and returning from the court, by the nearest practical conveyance, and the number of days he will have been necessarily absent in going to and returning from the place of trial; which affidavit shall be a part of the certificate issued by the clerk, copy of which is to be kept in a well-bound book. Fees shall not be allowed to more than two witnesses to the same fact, unless the judge before whom the cause is tried shall after such case has been tried, continued or otherwise disposed of, certify that such witnesses were necessary in the cause. Witness, when attached and conveyed by sheriff, shall not be entitled to receive fees while in custody of such officer.

No witness subpoenaed or attached for the purpose of proving the general reputation of the defendant shall be allowed the benefits hereof, provided the trial judge may, in his discretion, allow pay to not more than two character witnesses for the State and to not more than two character witnesses for the defendant.

(4) The judge, when any such claim is presented to him, shall examine the same carefully, and inquire into the correctness thereof, and approve same, in whole or in part, or disapprove the entire claim, as the facts and law may require; and such approval shall be conditioned only upon and subject to the approval of the State Comptroller, as provided for in Article 52.30; and said claim with the action of the judge thereon shall be entered on the minutes of said court and upon the approval of said claim by the judge, the clerk if there be one, otherwise the judge, shall make a certified list of said claim, upon forms prescribed by the Comptroller, furnishing such information as required by him, and send the same to the Comptroller at such times as he may require. No fee shall be required of the witness for the services herein provided. The service mentioned in the foregoing sentence shall include the issuance of certificate, swearing the witness to claim for witness fees and reporting to Comptroller, and witness shall not be required to pay any additional amount for the completion of the certificate.

(5) The Comptroller, upon receipt of such claim and the certified list provided for in the foregoing section, shall carefully examine the same, and if he deems said claim correct, and in compliance with and authorized by law in every respect, draw his warrant on the State Treasury for the amount due in favor of the witness entitled to same, or to any person such certificate has been assigned by such witness, but no warrant shall issue to any assignee of such witness claim unless the assignment is made under oath and acknowledged before some person duly authorized to administer oaths, certified to by the officer and under seal. If the appropriation for paying such account is exhausted, the Comptroller shall file the same away and issue a certificate in the name of the witness entitled to same, stating therein the

amount of the claim. All such claims not filed in the office of the Comptroller within twelve months from the date same became due and payable shall be forever barred.

Art. 35.28 When no clerk

In each instance in Article 35 27 in which the clerk of the court is authorized or directed to perform any act, the judge of such court shall perform the same if there is no clerk of the court.

CHAPTER THIRTY-SIX

THE TRIAL BEFORE THE JURY

Art.

36.01 Order of proceeding in trial.
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36.03 Witnesses placed under rule.
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36.31 Disagreement of jury.
36.32 Receipt of verdict and final adjournment.
36.33 Discharge without verdict.

Article 36.01 [642] [717] [697] Order of proceeding in trial

A jury being impaneled in any criminal action, the cause shall proceed in the following order:

1. The indictment or information shall be read to the jury by the attorney prosecuting. When prior convictions are alleged for purposes of enhancement only and are not jurisdictional, that portion of the indictment or information reciting such convictions shall not be read until the hearing on punishment is held as provided in Article 37.07.

2. The special pleas, if any, shall be read by the defendant's counsel, and if the plea of not guilty is also relied upon, it shall also be stated.

3. The State's attorney shall state to the jury the nature of the accusation and the facts which are expected to be proved by the State in support thereof.

4. The testimony on the part of the State shall be offered.

5. The nature of the defenses relied upon and the facts expected to be proved in their support shall be stated by defendant's counsel.

6. The testimony on the part of the defendant shall be offered.

7. Rebutting testimony may be offered on the part of each party.

8. In the event of a finding of guilty, the trial shall then proceed as set forth in Article 37.07.

Art. 36.02 [643] [718] [698] Testimony at any time

The court shall allow testimony to be introduced at any time before the argument of a cause is concluded, if it appears that it is necessary to a due administration of justice.

Art. 36.03 [644] [719] [699] Witnesses placed under rule

At the request of either party, the witnesses on both sides may be sworn and placed in the custody of an officer and removed out of the courtroom to some place where they cannot hear the testimony as delivered by any other witness in the cause. This is termed placing witnesses under rule.

Art. 36.04 [645] [720–721] Part of witnesses under rule

The party requesting the witnesses to be placed under rule may designate such as he desires placed under rule, and those not designated will be exempt from the rule, or the party may have all of the witnesses in the case placed under rule. The enforcement of the rule is in the discretion of the court.

Art. 36.05 [646] [722] [702] Not to hear testimony

Witnesses under rule shall be attended by an officer, and all their reasonable wants provided for, unless the court, in its discretion, directs that they be allowed to go at large; but in no case where the

witnesses are under rule shall they be allowed to hear any testimony in the case.

Art. 36.06 [647] [723] [703] Instructed by the court

Witnesses, when placed under rule, shall be instructed by the court that they are not to converse with each other or with any other person about the case, except by permission of the court, and that they are not to read any report of or comment upon the testimony in the case while under rule. The officer who attends the witnesses shall report to the court at once any violation of its instructions, and the party violating the same shall be punished for contempt of court.

Art. 36.07 [648] [724] [704] Order of argument

The order of argument may be regulated by the presiding judge; but the State's counsel shall have the right to make the concluding address to the jury.

Art. 36.08 [649] [725] [705] Number of arguments

The court shall never restrict the argument in felony cases to a number of addresses less than two on each side.

Art. 36.09 [650] [726] [706] Severance on separate indictments

Two or more defendants who are jointly or separately indicted or complained against for the same offense or an offense growing out of the same transaction may be, in the discretion of the court, tried jointly or separately as to one or more defendants; provided that in any event either defendant may testify for the other or on behalf of the State; and provided further, that in cases in which, upon timely motion to sever, and evidence introduced thereon, it is made known to the court that there is a previous admissible conviction against one defendant or that a joint trial would be prejudicial to any defendant for any reason, the court shall order a severance as to the defendant whose joint trial would prejudice the other defendant or defendants.

Art. 36.10 [652] [728] [708] Order of trial

If a severance is granted, the defendants may agree upon the order in which they are to be tried, but if they fail to agree, the court shall direct the order of the trial.

Art. 36.11 [655] [731–733] Discharge before verdict

If it appears during a trial that the court has no jurisdiction of the offense, or that the facts charged in the indictment do not constitute an offense, the jury shall be discharged. The accused shall also be discharged, but such discharge shall be no bar in any case to a prosecution before the proper court for any offense.

Art. 36.12 [656] [732] [712] Court may commit

If the want of jurisdiction arises from the fact that the defendant is not liable to prosecution in the county where the indictment was presented, the court may in felony cases order the accused into custody for a reasonable length of time to await a warrant for his arrest from the proper county; or if the offense be bailable, may require him to enter into recognizance to answer before the proper court; in which case a certified copy of the recognizance shall be sent forthwith to the clerk of the proper court, to be enforced by that court in case of forfeiture.

Art. 36.13 [657] [734] Jury is judge of facts

Unless otherwise provided in this Code, the jury is the exclusive judge of the facts, but it is bound to receive the law from the court and be governed thereby.

Art. 36.14 [658] [735–736] Charge of court

Subject to the provisions of Article 36.07 in each felony case and in each misdemeanor case tried in a court of record, the judge shall, before the argument begins, deliver to the jury, except in pleas of guilty, where a jury has been waived, a written charge distinctly setting forth the law applicable to the case; not expressing any opinion as to the weight of the evidence, not summing up the testimony, discussing the facts or using any argument in his charge calculated to arouse the sympathy or excite the passions of the jury. Before said charge is read to the jury, the defendant or his counsel shall have a reasonable time to examine the same and he shall present his objections thereto in writing, distinctly specifying each ground of objection. Said objections may embody errors claimed to have been committed in the charge, as well as errors claimed to have been committed by omissions therefrom or in failing to charge upon issues arising from the facts, and in no event shall it be necessary for the defendant or his counsel to present special requested charges to preserve or maintain any error assigned to the charge, as herein provided. Compliance with the provisions of this Article is all that is necessary to preserve, for review, the exceptions and objections presented to the charge and any amendment or modification thereof. In no event shall it be necessary for the defendant to except to the action of the court in over-ruling defendant's exceptions or objections to the charge.

Art. 36.15 [659] [737] [717] Requested special charges

Before the court reads his charge to the jury, counsel on both sides shall have a reasonable time to present written instructions and ask that they be given to the jury. The court shall give or refuse these charges. The defendant may, by a special requested instruction, call the trial court's attention to error in the charge, as well as omissions therefrom, and no other exception or objection to the court's charge shall be necessary to preserve any error reflected by any special requested instruction which the trial court refuses.

Any special requested charge which is granted shall be incorporated in the main charge and shall be treated as a part thereof, and the jury shall not be advised that it is a special requested charge of either party. The judge shall read to the jury only such special charges as he gives.

When the defendant has leveled objections to the charge or has requested instructions or both, and the court thereafter modifies his charge and rewrites the same and in so doing does not respond to objections or requested charges, or any of them, then the objections or requested charges shall not be deemed to have been waived by the party making or requesting the same, but shall be deemed to continue to have been urged by the party making or requesting the same unless the contrary is shown by the record; no exception by the defendant to the action of the court shall be necessary or required in order to preserve for review the error claimed in the charge.

Art. 36.16 [660] Final charge

After the judge shall have received the objections to his main charge, together with any special charges offered, he may make such changes in his main charge as he may deem proper, and the defendant or his counsel shall have the opportunity to present their objections thereto and in the same manner as is provided in Article 36.15, and thereupon the judge shall read his charge to the jury as finally written, together with any special charges given, and no further exception or objection shall be required of the defendant in order to preserve any objections or exceptions theretofore made. After the argument begins no further charge shall be given to the jury unless required by the improper argument of counsel or the request of the jury, or unless the judge shall, in his discretion, permit the introduction of other testimony, and in the event of such further charge, the defendant or his counsel shall have the right to present objections in the same manner as is prescribed in Article 36.15. The failure of the court to give the defendant or his counsel a reasonable time to examine the charge and specify the ground of objection shall be subject to review either in the trial court or in the appellate court.

Art. 36.17 [661] [738] [718] Charge certified by judge

The general charge given by the court and all special charges given or refused shall be certified by the judge and filed among the papers in the cause.

Art. 36.18 [665] [742] [722] Jury may take charge

The jury may take to their jury room the charges given by the court after the same have been filed. They shall not be permitted to take with them any charge or part thereof which the court has refused to give.

Art. 36.19 [666] [743] [723] Review of charge on appeal

Whenever it appears by the record in any criminal action upon appeal that any requirement of Articles 36.14, 36.15, 36.16, 36.17 and

36.18 has been disregarded, the judgment shall not be reversed unless the error appearing from the record was calculated to injure the rights of defendant, or unless it appears from the record that the defendant has not had a fair and impartial trial. All objections to the charge and to the refusal of special charges shall be made at the time of the trial.

Art. 36.20 [667] [744] [724] Bill of exceptions

The defendant, by himself, or counsel, may tender his bills of exceptions to any decision, opinion, order or charge of the court or other proceedings in the case; and the judge shall sign such bills of exceptions, under the rules prescribed in Article 40.10. The bills of exception may be in narrative form or by questions and answers, and no particular form of words shall be required. Where the matter about which complaint is made and the trial court's ruling thereon reasonably appear from any formal or informal bill of exception, same shall be considered upon appeal, regardless of whether or not the bill of exception is multifarious or relates to more than one subject, complaint, or objection. Where the argument of State's counsel about which complaint is made in a bill of exception is manifestly improper, or violates some mandatory statute, or some new fact is thereby injected into the case, it shall not be necessary that the bill of exception negative that the argument was not invited, or in reply to argument of defendant or his counsel, or any other fact by which the argument complained of may have been authorized. If such matters exist, the trial court by qualification or otherwise, may require the bill of exception to reflect any reason whereby the argument complained of would not be error. The transcription of any evidence, testimony, or argument of State's counsel, with the objections made to such evidence, testimony, or argument, shall constitute an acceptable bill of exceptions under this Code.

Art. 36.21 [670] [747] [727] To provide jury room

The sheriff shall provide a suitable room for the deliberation of the jury and supply them with such necessary food and lodging as he can obtain. No intoxicating liquor shall be furnished them. In all cases wherein a jury consists partly of male jurors and partly of female jurors, the sheriff shall provide facilities for the female jurors separate and apart from the facilities provided for the male jurors.

Art. 36.22 [671] [748] [728] Conversing with jury

No person shall be permitted to be with a jury while it is deliberating. No person shall be permitted to converse with a juror about the case on trial except in the presence and by the permission of the court.

Art. 36.23 [672] [749] [729] Violation of preceding Article

Any juror or other person violating the preceding Article shall be punished for contempt of court by confinement in jail not to exceed three days or by fine not to exceed one hundred dollars, or by both such fine and imprisonment.

Art. 36.24 [673] [750] [730] Officer shall attend jury

The sheriff of the county shall furnish the court with a bailiff during the trial of any case to attend the wants of the jury and to act under the direction of the court. If the person furnished by the sheriff is to be called as a witness in the case he may not serve as bailiff.

Art. 36.25 [674] [751] [731] Written evidence

There shall be furnished to the jury upon its request any exhibits admitted as evidence in the case.

Art. 36.26 [675] [752] [732] Foreman of jury

Each jury shall appoint one of its members foreman.

Art. 36.27 [676] [753] [733] Jury may communicate with court

When the jury wishes to communicate with the court, it shall so notify the sheriff, who shall inform the court thereof. Any communication relative to the cause must be written, prepared by the foreman and shall be submitted to the court through the bailiff. The court shall answer any such communication in writing, and before giving such answer to the jury shall use reasonable diligence to secure the presence of the defendant and his counsel, and shall first submit the question and also submit his answer to the same to the defendant or his counsel or objections and exceptions, in the same manner as any other written instructions are submitted to such counsel, before the court gives such answer to the jury, but if he is unable to secure the presence of the defendant and his counsel, then he shall proceed to answer the same as he deems proper. The written instruction or answer to the communication shall be read in open court unless expressly waived by the defendant.

All such proceedings in felony cases, shall be a part of the record and recorded by the court reporter.

Art. 36.28 [678] [755] [735] Jury may have witness re-examined or testimony read

In the trial of a criminal case in a court of record, if the jury disagree as to the statement of any witness they may, upon applying to the court, have read to them from the court reporter's notes that part of such witness testimony or the particular point in dispute, and no other; but if there be no such reporter, or if his notes cannot be read to the jury, the court may cause such witness to be again brought upon the stand and the judge shall direct him to repeat his testimony as to the point in dispute, and no other, as nearly as he can in the language used on the trial.

Art. 36.29 If a juror becomes ill

Not less than twelve jurors can render and return a verdict in a felony case. It must be concurred in by each juror and signed by the foreman; provided, however, when pending the trial of any felony case, one juror may die or be disabled from sitting at any time before the charge of the court is read to the jury, the remainder of the jury shall have the power to render the verdict; but when the verdict shall be rendered by less than the whole number, it shall be signed by every member of the jury concurring in it. After the charge of the court is read to the jury, if any one of them becomes so sick as to prevent the continuance of his duty, or any accident of circumstance occurs to prevent their being kept together under circumstances under which the law or the instructions of the court requires that they be kept together, the jury may be discharged.

Art. 36.30 [681] [758] [738] Discharging jury in misdemeanor

If nine of the jury can be kept together in a misdemeanor case in the district court, they shall not be discharged. If more than three of the twelve are discharged, the entire jury shall be discharged.

Art. 36.31 [682] [759] [739] Disagreement of jury

After the cause is submitted to the jury, it may be discharged when it cannot agree and both parties consent to its discharge; or the court may in its discretion discharge it where it has been kept together for such time as to render it altogether improbable that it can agree.

Art. 36.32 [683] [760] [740] Receipt of verdict and final adjournment

During the trial of any case, the term shall be deemed to have been extended until such time as the jury has rendered its verdict or been discharged according to law.

Art. 36.33 [684] [761] [741] Discharge without verdict

When a jury has been discharged, as provided in the four preceding Articles, without having rendered a verdict, the cause may be again tried at the same or another term.

CHAPTER THIRTY-SEVEN

THE VERDICT

Art.
37.01 Verdict.
37.02 Verdict by nine jurors.
37.03 In county court.
37.04 When jury has agreed.
37.05 Polling the jury.
37.06 Presence of defendant.
37.07 Verdict must be general; separate hearing on proper punishment.
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37.11 Defendants tried jointly.
37.12 Judgment on verdict.
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37.14 Acquittal of higher offense as jeopardy.

Article 37.01 [686] [763] [743] Verdict

A "verdict" is a written declaration by a jury of its decision of the issue submitted to it in the case.

Art. 37.02 [688] [765] [745] Verdict by nine jurors

In misdemeanor cases in the district court, where one or more jurors have been discharged from serving after the cause has been submitted to them, if there be as many as nine of the jurors remaining, those remaining may render and return a verdict; but in such case, the verdict must be signed by each juror rendering it.

Art. 37.03 [689] [766] [746] In county court

In the county court the verdict must be concurred in by each juror.

Art. 37.04 [690] [767] [747] When jury has agreed

When the jury agrees upon a verdict, it shall be brought into court by the proper officer; and if it states that it has agreed, the verdict shall be read aloud by the clerk. If in proper form and no juror dissents therefrom, and neither party requests a poll of the jury, the verdict shall be entered upon the minutes of the court.

Art. 37.05 [691] [768] [748] Polling the jury

The State or the defendant shall have the right to have the jury polled, which is done by calling separately the name of each juror and asking him if the verdict is his. If all, when asked, answer in

the affirmative, the verdict shall be entered upon the minutes; but if any juror answer in the negative, the jury shall retire again to consider its verdict.

Art. 37.06 [692] [769] [749] Presence of defendant

In felony cases the defendant must be present when the verdict is read unless his absence is wilful or voluntary. A verdict in a misdemeanor case may be received and read in the absence of the defendant.

Art. 37.07 [693] [770] [750] Verdict must be general; separate hearing on proper punishment

1. The verdict in every criminal action must be general. When there are special pleas on which a jury is to find, it must say in its verdict that the allegations in such pleas are true or untrue. If the plea is not guilty, it must find that the defendant is either guilty or not guilty.

2. Alternate procedure.

(a) In felony cases less than capital and in capital cases where the State has made it known that it will not seek the death penalty, and where the plea is not guilty, the judge shall, before the argument begins, first submit to the jury the issue as to the guilt or innocence of the defendant of the offense or offenses charged, without authorizing the jury to pass upon the punishment to be imposed; provided, however, that in the charge which submits the issue of guilt or innocence there shall be included instructions showing the jury the punishment provided by law for each offense submitted.

(b) If a finding of guilty is returned, it shall then be the responsibility of the judge to assess the punishment applicable to the offense charged where the same is not absolutely fixed by law to some particular penalty except when the defendant, upon the return of a finding of guilty, requests that the punishment be assessed by the same jury. In the event the defendant elects to have the jury fix the punishment in cases where the punishment is fixed by law, the court shall instruct the jury that if they find the defendant is the same person who was convicted in the prior conviction or convictions alleged for enhancement, they should set his punishment as prescribed by law.

Regardless of whether the punishment be assessed by the judge or the jury, evidence may be offered by the State and the defendant as to the prior criminal record of the defendant, his general reputation and his character.

(c) After the introduction of such evidence has been concluded, and if the jury has been selected to assess the punishment, the court shall give such additional written instructions as may be necessary and the order of procedure and the rules governing the conduct of the trial shall be the same as are applicable on the issue of guilt or innocence.

(d) In cases where the matter of punishment is referred to the jury, the verdict shall not be complete until the jury has rendered a verdict both on the guilt or innocence of the defendant and the amount

of punishment, where the jury finds the defendant guilty. In the event the jury shall fail to agree, a mistrial shall be declared, the jury shall be discharged, and no jeopardy shall attach.

(e) When the judge assesses the punishment, and after the hearing of the evidence hereinabove provided for, he shall forthwith announce his decision in open court as to the punishment to be assessed.

(f) Nothing herein shall be construed as affecting the admissibility of extraneous offenses on the question of guilt or innocence.

Art. 37.08 [694] [771] [751] Offenses of different degree

In a prosecution for an offense including lower offenses, the jury may find the defendant not guilty of the higher offense, but guilty of any lower offense included.

Art. 37.09 [695] [772] [752] Offenses consisting of degrees

The following offenses include different degrees:

1. Murder, which includes all the lesser degrees of culpable homicide, and also an assault with intent to commit murder;

2. An assault with intent to commit any felony, which includes all assaults of an inferior degree;

3. Maiming, which includes aggravated and simple assault and battery;

4. Burglary, which includes every species of house breaking and theft or other felony when charged in the indictment in connection with the burglary;

5. Riot, which includes unlawful assembly;

6. Kidnapping or abduction, which includes false imprisonment; and

7. Every offense against the person includes within it assaults with intent to commit said offense, when such attempt is a violation of the penal law.

Art. 37.10 [696] [773–774] Informal verdict

If the verdict of the jury is informal, its attention shall be called to it, and with its consent the verdict may, under the direction of the court, be reduced to the proper form. If the jury refuses to have the verdict altered, it shall again retire to its room to deliberate, unless it manifestly appear that the verdict is intended as an acquittal; and in that case, the judgment shall be rendered accordingly, discharging the defendant.

Art. 37.11 [697] [775–776] Defendants tried jointly

Where several defendants are tried together, the jury may convict each defendant it finds guilty and acquit others. If it agrees to a verdict as to one or more, it may find a verdict in accordance with such agreement, and if it cannot agree as to others, a mistrial may be entered as to them.

Art. 37.12 [698] [777–778] Judgment on verdict

On each verdict of acquittal or conviction, the proper judgment shall be entered immediately. If acquitted, the defendant shall be at once discharged from all further liability upon the charge for which he was tried; provided that, in misdemeanor cases where there is returned a verdict, or a plea of guilty is entered and the punishment assessed is by fine only, the court may, on written request of the defendant and for good cause shown, defer judgment until some other day fixed by order of the court; but in no event shall the judgment be deferred for a longer period of time than six months. On expiration of the time fixed by the order of the court, the court or judge thereof, shall enter judgment on the verdict or plea and the same shall be executed as provided by Chapter 43 of this Code. Provided further, that the court or judge thereof, in the exercise of sound discretion may permit the defendant where judgment is deferred, to remain at large on his personal bond, or may require him to enter into bail bond in a sum at least double the amount of the assessed fine and costs, conditioned that the defendant and sureties, jointly and severally, will pay such fine and costs unless the defendant personally appears on the day, set in the order and discharges the judgment in the manner provided by Chapter 43 of this Code; and for the enforcement of any judgment entered, all writs, processes and remedies of this Code are made applicable so far as necessary to carry out the provisions of this Article.

Art. 37.13 [701] [781] [761] If jury believes accused insane

When a jury has been impaneled to assess the punishment upon a plea of guilty, it shall say in its verdict what the punishment is which it assesses; but if it is of the opinion that a person pleading guilty is insane, it shall so report to the court, and an issue as to that fact shall be tried before another jury; and if, upon such trial, it be found that the defendant is insane, such proceedings shall be had as directed in cases where a defendant becomes insane after conviction.

Art. 37.14 [702] [782] [762] Acquittal of higher offense as jeopardy

If a defendant, prosecuted for an offense which includes within it lesser offenses, be convicted of an offense lower than that for which he is indicted, and a new trial be granted him, or the judgment be arrested for any cause other than the want of jurisdiction, the verdict upon the first trial shall be considered an acquittal of the higher offense; but he may, upon a second trial, be convicted of the same offense of which he was before convicted, or any other inferior thereto.

CHAPTER THIRTY-EIGHT

EVIDENCE IN CRIMINAL ACTIONS

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Article 38.01 [703] [783] [763] Rules of common law

The rules of evidence known to the common law of England, both in civil and criminal cases, shall govern in the trial of criminal actions in this State, except where they are in conflict with the provisions of this Code or of some other statute of the State.

Art. 38.02 [704] [784] [764] Rules of civil statute

The rules of evidence prescribed in the statute law of this State in civil suits shall, so far as applicable, govern also in criminal actions when not in conflict with the provisions of this Code or of the Penal Code.

Art. 38.03 [705] [785] [765] Presumption of innocence

The defendant in a criminal case is presumed to be innocent until his guilt is established by legal evidence beyond a reasonable doubt, and in case of reasonable doubt as to his guilt he is entitled to be acquitted.

Art. 38.04 [706] [786] [766] Jury are judges of facts

The jury, in all cases, is the exclusive judge of the facts proved, and of the weight to be given to the testimony, except where it is provided by law that proof of any particular fact is to be taken as either conclusive or presumptive proof of the existence of another fact, or where the law directs that a certain degree of weight is to be attached to a certain species of evidence.

Art. 38.05 [707] [787] [767] [729] Judge shall not discuss evidence

In ruling upon the admissibility of evidence, the judge shall not discuss or comment upon the weight of the same or its bearing in the case, but shall simply decide whether or not it is admissible; nor shall he, at any stage of the proceeding previous to the return of the verdict, make any remark calculated to convey to the jury his opinion of the case.

Art. 38.06 [708] Persons competent to testify

All persons are competent to testify in criminal cases except the following:

1. Insane persons who are in an insane condition of mind at the time when they are offered as a witness, or who were in that condition when the events happened of which they are called to testify; and

2. Children or other persons who, after being examined by the court, appear not to possess sufficient intellect to relate transactions with respect to which they are interrogated, or who do not understand the obligation of an oath.

Art. 38.07 [709] [789] [769] Female alleged to be seduced

In prosecutions for seduction the female alleged to have been seduced shall be permitted to testify; but no conviction shall be had upon her testimony unless the same is corroborated by other evidence tending to connect the defendant with the offense charged.

Art. 38.08 [710] [790] [770] Defendant may testify

Any defendant in a criminal action shall be permitted to testify in his own behalf therein, but the failure of any defendant to so testify shall not be taken as a circumstance against him, nor shall the same be alluded to or commented on by counsel in the cause.

Art. 38.09 [712] [792] [772] Court may determine competency

The court may, upon suggestion made, or of its own option interrogate a person who is offered as a witness, to ascertain whether he is competent to testify, or the competency or incompetency of the witness may be shown by evidence.

Art. 38.10 [713] [793] [773] All others competent witnesses

All other persons, except those enumerated in Articles 38.06 and 38.11, whatever may be the relationship between the defendant and witness, are competent to testify, except that an attorney at law shall not disclose a communication made to him by his client during the existence of that relationship, nor disclose any other fact which came to the knowledge of such attorney by reason of such relationship.

Art. 38.11 [714] [794–795] Husband or wife as witness

Neither husband nor wife shall, in any case, testify as to communications made by one to the other while married. Neither husband nor wife shall, in any case, after the marriage relation ceases, be made witnesses as to any such communication made while the marriage relation existed except in a case where one or the other is on trial for an offense and a declaration or communication made by the wife to the husband or by the husband to the wife goes to extenuate or justify the offense. The husband and wife may, in all criminal actions, be witnesses for each other, but except as hereinafter provided, they shall in no case testify against each other in a criminal prosecution. However, a wife or husband may voluntarily testify against each other in any case for an offense involving any grade of assault or violence committed by one against the other or against any child of either under sixteen years of age, or in any case where either is charged with incest of a child of either, or in any case where either is charged with an offense defined in Chapter Three of the Penal Code of Texas pertaining to wife or child desertion or wilful failure or refusal to support his or her minor children.

Art. 38.12 [715] [796] [776] [736] Religious opinion

No person is incompetent to testify on account of his religious opinion or for the want of any religious belief.

Art. 38.13 [717] [798–9–800] Judge as a witness

The trial judge is a competent witness for either the State or the accused, and may be sworn by the clerk of his court and examined, but he is not required to testify if he declares that there is no fact within his knowledge important in the case.

Art. 38.14 [718] [801] [781] Testimony of accomplice

A conviction cannot be had upon the testimony of an accomplice unless corroborated by other evidence tending to connect the defend-

ant with the offense committed; and the corroboration is not sufficient if it merely shows the commission of the offense.

Art. 38.15 [720] [803] [783] Two witnesses in treason

No person can be convicted of treason except upon the testimony of at least two witnesses to the same overt act, or upon his own confession in open court.

Art. 38.16 [721] [804] [784] Evidence in treason

Evidence shall not be admitted in a prosecution for treason as to an overt act not expressly charged in the indictment; nor shall any person be convicted under an indictment for treason unless one or more overt acts are expressly charged therein.

Art. 38.17 [722] [805] [785] Two witnesses required

In all cases where, by law, two witnesses, or one with corroborating circumstances, are required to authorize a conviction, if the requirement be not fulfilled, the court shall instruct the jury to render a verdict of acquittal, and they are bound by the instruction.

Art. 38.18 [723] [806] [786] Perjury and false swearing

In trials for perjury or false swearing, no person shall be convicted except upon the testimony of two credible witnesses, or of one credible witness corroborated strongly by other evidence as to the falsity of the defendant's statement under oath, or upon his own confession in open court.

Art. 38.19 [724] [807] [787] Intent to defraud in forgery

In trials of forgery, it need not be proved that the defendant committed the act with intent to defraud any particular person. It shall be sufficient to prove that the forgery was, in its nature, calculated to injure or defraud any of the sovereignties, bodies corporate or politic, officers or persons, named in the definition of forgery in the Penal Code.

Art. 38.20 [725] [808] [788] Dying declarations

The dying declaration of a deceased person may be offered in evidence, either for or against a defendant charged with the homicide of such deceased person, under the restrictions hereafter provided. To render the declarations of the deceased competent evidence, it must be satisfactorily proved:

1. That at the time of making such declaration he was conscious of approaching death, and believed there was no hope of recovery;

2. That such declaration was voluntarily made, and not through the persuasion of any person;

3. That such declaration was not made in answer to interrogatories calculated to lead the deceased to make any particular statement; and

4. That he was of sane mind at the time of making the declaration.

Art. 38.21 [726] [809] [789] Confession

The confession of a defendant may be used in evidence against him if it appear that the same was freely made without compulsion or persuasion, under the rules hereafter prescribed.

Art. 38.22 [727] [810] [790] When confession shall not be used

(a) The confession shall not be admissible if the defendant was in jail or other place of confinement or in the custody of an officer at the time it was made, unless:

1. It be shown to be the voluntary statement of the accused taken before an examining court in accordance with law, or

2. It be made in writing and signed by the accused and shows that the accused has at some time prior to the making thereof received the warning provided in Article 15.17. It must further show the time, date, place and name of the magistrate who administered the warning. It must further show that the person to whom the confession is made warned the accused: First, that he does not have to make any statement at all. Second, that any statement made by him may be used in evidence against him on his trial for the offense concerning which the confession is therein made, or

3. In connection with said confession he makes statement of facts or circumstances that are found to be true, which conduce to establish his guilt, such as the finding of secreted or stolen property, or the instrument with which he states the offense was committed, such statement shall not be admitted in evidence, unless it is witnessed by some person other than a peace officer, who shall sign the same as a witness.

(b) If the confession or statement has been found to have been voluntarily made and held admissible as a matter of law and fact by the court in a hearing in the absence of the jury, he shall enter an order stating his findings which shall be filed among the papers of the cause but not exhibited to the jury. Only thereafter may evidence pertaining to such matter be submitted to the jury and it shall be instructed that unless the jury believes beyond a reasonable doubt that such confession or statement was voluntarily made, the jury shall not consider such statement or confession for any purpose nor any evidence obtained as a result thereof.

(c) When the issue is raised by the evidence, the trial judge shall appropriately instruct the jury, generally, on the law pertaining to such statement or confession.

Art. 38.23 [727a] Evidence not to be used

No evidence obtained by an officer or other person in violation of any provisions of the Constitution or laws of the State of Texas, or of the Constitution or laws of the United States of America, shall be admitted in evidence against the accused on the trial of any criminal case.

In any case where the legal evidence raises an issue hereunder, the jury shall be instructed that if it believes, or has a reasonable doubt, that the evidence was obtained in violation of the provisions of this Article, then and in such event, the jury shall disregard any such evidence so obtained.

Art. 38.24 [728] [811] [791] Part of an act, declaration, conversation or writing

When part of an act, declaration or conversation or writing is given in evidence by one party, the whole on the same subject may be inquired into by the other, as when a letter is read, all letters on the same subject between the same parties may be given. When a detailed act, declaration, conversation or writing is given in evidence, any other act, declaration or writing which is necessary to make it fully understood or to explain the same may also be given in evidence.

Art. 38.25 [729] [812] [792] Written part of instrument controls

When an instrument is partly written and partly printed, the written shall control the printed portion when the two are inconsistent.

Art. 38.26 [730] [813] [793] If subscribing witness denies execution

When a subscribing witness denies or does not recollect the execution of an instrument to which his name appears, its execution may be proved by other evidence.

Art. 38.27 [731] [814] [794] Evidence of handwriting

It is competent to give evidence of handwriting by comparison, made by experts or by the jury. Proof by comparison only shall not be sufficient to establish the handwriting of a witness who denies his signature under oath.

Art. 38.28 [732] [815] [795] Attacking testimony of his own witness

A party may, when testimony of his own witness is injurious to his cause, attack the testimony in any other manner except by offering evidence of the witness' bad character.

Art. 38.29 [732a] Indictment, information or complaint not admissible to impeach witness

The fact that a defendant in a criminal case, or a witness in a criminal case, is or has been, charged by indictment, information or complaint, with the commission of an offense against the criminal laws of this State, of the United States, or any other State shall not be admissible in evidence on the trial of any criminal case for the purpose of impeaching any person as a witness unless on trial under such indictment, information or complaint a final conviction has resulted, or a suspended sentence has been given and has not been set aside, or such person has been placed on probation and the period of probation has not expired. In trials of defendants under Article 36.09, it may be shown that the witness is presently charged with the same offense as the defendant at whose trial he appears as a witness.

Art. 38.30 [733] [816] [796] Interpreter

When a witness does not understand and speak the English language, an interpreter must be sworn to interpret for him. Any person may be subpoenaed, attached or recognized in any criminal action or proceeding, to appear before the proper judge or court to act as interpreter therein, under the same rules and penalties as are provided for witnesses. Such interpreters shall receive the same pay as interpreters receive in civil suits.

Art. 38.31 [733a] Interpreters for deaf or deaf-mute persons

(a) In all criminal prosecutions, where the accused is deaf or a deaf-mute, he shall have the proceedings of the trial interpreted to him in a language that he can understand by a qualified interpreter appointed by the court.

(b) In all cases where the mental condition of a person is being considered and where such person may be committed to a mental institution, and where such person is deaf or a deaf-mute, all of the court proceedings pertaining to him shall be interpreted by a qualified interpreter appointed by the court.

(c) In any case where an interpreter is required to be appointed by the court under this Article, the court shall not commence proceedings until the appointed interpreter is in court in a position not exceeding ten feet from and in full view of the deaf person.

(d) The interpreter appointed under the terms of this Article shall be required to take an oath that he will make a true interpretation to the person accused or being examined, which person is deaf or a deaf-mute, of all the proceedings of his case in a language that he understands; and that he will repeat said deaf or deaf-mute person's answer to questions to counsel, court, or jury, in the English language, in his best skill and judgment.

(e) Interpreters appointed under the terms of this Article shall be paid for their services a sum to be determined by the court.

CHAPTER THIRTY-NINE

DEPOSITIONS AND DISCOVERY

Art.
39.01 In examining trial.
39.02 Depositions for defendant.
39.03 Officers who may take the deposition.
39.04 Applicability of civil rules.
39.05 Objections.
39.06 Written interrogatories.
39.07 Certificate.
39.08 Authenticating the deposition.
39.09 Non-resident witnesses.
39.10 Return.
39.11 Waiver.
39.12 Predicate to read.
39.13 Impeachment.
39.14 Discovery.

Article 39.01 [734] [817] [797] In examining trial

When an examination takes place in a criminal action before a magistrate, the defendant may have the deposition of any witness taken by any officer or officers named in this Chapter. The defendant shall not use the deposition for any purpose unless he first consent that the entire evidence or statement of the witness may be used against him by the State on the trial of the case, subject to all legal objections. The deposition of a witness duly taken before an examining trial or a jury of inquest and reduced to writing and certified according to law where the defendant was present when such testimony was taken, and had the privilege afforded of cross-examining the witness, or taken at any prior trial of the defendant for the same offense, may be used by either the State or the defendant in the trial of such defendant's criminal case under the following circumstances:

When oath is made by the party using the same that the witness resides outside the State; or that since his testimony was taken, the witness has died, or that he has removed beyond the limits of the State, or that he has been prevented from attending the court through the act or agency of the other party, or by the act or agency of any person whose object was to deprive the defendant of the benefit of the testimony; or that by reason of age or bodily infirmity, such witness cannot attend. When the testimony is sought to be used by the State, the oath may be made by any credible person. When sought to be used by the defendant, the oath shall be made by him in person.

Art. 39.02 [735] [818] [798] Depositions for defendant

Depositions of witnesses may also be taken by the defendant. When the defendant desires to take the deposition of a witness, he shall, by himself or counsel, file with the clerk of the court in which the

case is pending an affidavit stating the facts necessary to constitute a good reason for taking the same, and an application to take the same. Provided that upon the filing of such application and, after notice to the attorney for the State, the court shall hear the application and determine if good reason exists for taking the deposition. Such determination shall be made based on the facts made known at the hearing and the court, in its judgment, shall grant or deny the application on such facts.

Art. 39.03 [736, 737, 738] [819, 820, 821] [799, 800, 801] Officers who may take the deposition

Upon the filing of such an affidavit and application, the court shall appoint, order or designate one of the following persons before whom such deposition shall be taken:

1. A district judge.
2. A county judge.
3. A notary public.
4. A district clerk.
5. A county clerk.

Such order shall specifically name such person. Failure of a witness to respond thereto, shall be punishable by contempt by the court. Such deposition shall be oral or written, as the court shall direct.

Art. 39.04 [737] [820] [800] Applicability of civil rules

The rules prescribed in civil cases for issuance of commissions, subpoenaing witnesses, taking the depositions of witnesses and all other formalities governing depositions shall, as to the manner and form of taking and returning the same and other formalities to the taking of the same, govern in criminal actions, when not in conflict with this Code.

Art. 39.05 [740] [823] [803] Objections

The rules of procedure as to objections in depositions in civil actions shall govern in criminal actions when not in conflict with this Code.

Art. 39.06 [742] [825] [805] Written interrogatories

When any such deposition is to be taken by written interrogatories, such written interrogatories shall be filed with the clerk of the court, and a copy of the same served on all other parties or their counsel for the length of time and in the manner required for service of interrogatories in civil action, and the same procedure shall also be followed with reference to cross-interrogatories as that prescribed in civil actions.

Art. 39.07 [743] [826] [806] Certificate

Where depositions are taken under commission in criminal actions, the officer or officers taking the same shall certify that the person deposing is the identical person named in the commission, and is a credible person; or if they cannot certify to the identity of the witness, there shall be an affidavit of some person attached to the deposition proving the identity and credibility of such witness, and the officer or officers shall certify that the person making the affidavit is known to them, and is worthy of credit.

Art. 39.08 [744] [827] [807] Authenticating the deposition

The official seal and signature of the officer taking the deposition shall be attached to the certificate authenticating the deposition.

Art. 39.09 [737, 738] [820, 821] [800, 801] Non-resident witnesses

Depositions of a witness residing out of the State may be taken before a judge or before a commissioner of deeds and depositions for this State, who resides within the State where the deposition is to be taken, or before a notary public of the place where such deposition is to be taken, or before any commissioned officer of the armed services or before any diplomatic or consular officer. The deposition of a non-resident witness who may be temporarily within the State, may be taken under the same rules which apply to the taking of depositions of other witnesses in the State.

Art. 39.10 [748] [831] [811] Return

In all cases the return of depositions may be made as provided in civil actions.

Art. 39.11 Waiver

The State and defense may agree upon a waiver of any formalities in the taking of a deposition other than that the taking of such deposition must be under oath.

Art. 39.12 [749] [832–833] Predicate to read

Depositions taken in criminal actions shall not be read unless oath be made that the witness resides out of the State; or that since his deposition was taken, the witness has died; or that he has removed beyond the limits of the State; or that he has been prevented from attending the court through the act or agency of the defendant; or by the act or agency of any person whose object was to deprive the defendant of the benefit of the testimony; or that by reason of age or bodily infirmity, such witness cannot attend. When the deposition is sought to be used by the State, the oath may be made by any credible person. When sought to be used by the defendant, the oath shall be made by him in person.

Art. 39.13 Impeachment

Nothing contained in the preceding Articles shall be construed as prohibiting the use of any such evidence for impeachment purposes under the rules of evidence heretofore existing at common law.

Art. 39.14 Discovery

Upon motion of the defendant showing good cause therefor and upon notice to the other parties, the court in which an action is pending may order the State before or during trial of a criminal action therein pending or on trial to produce and permit the inspection and copying or photographing by or on behalf of the defendant of any designated documents, papers, written statement of the defendant, (except written statements of witnesses and except the work product of counsel in the case and their investigators and their notes or report), books, accounts, letters, photographs, objects or tangible things not privileged, which constitute or contain evidence material to any matter involved in the action and which are in the possession, custody or control of the State or any of its agencies. The order shall specify the time, place and manner of making the inspection and taking the copies and photographs of any of the aforementioned documents or tangible evidence; provided, however, that the rights herein granted shall not extend to written communications between the State or any of its agents or representatives or employees. Nothing in this Act shall authorize the removal of such evidence from the possession of the State, and any inspection shall be in the presence of a representative of the State.

PROCEEDINGS AFTER VERDICT

CHAPTER FORTY

NEW TRIALS

Art.
40.01 Definition of "new trial".
40.02 Granted only to accused.
40.03 Grounds for new trial in felony.
40.04 In misdemeanors.
40.05 Time to apply for new trial; amendment.
40.06 State may controvert motion.
40.07 Judge not to discuss evidence.
40.08 Effect of a new trial.
40.09 The record on appeal.
40.10 Application of Civil Statutes.

Article 40.01 [751] [835] [815] Definition of "new trial"

A "new trial" is the rehearing of a criminal action, after verdict, before the judge or another jury.

Art. 40.02 [752] [836] [816] Granted only to accused

A new trial can in no case be granted where the verdict or judgment has been rendered for the accused.

Art. 40.03 [753] [837] [817] Grounds for new trial in felony

New trials, in cases of felony, shall be granted for the following causes, and for no other:

1. Where the defendant has been tried in his absence, or has been denied counsel;

2. Where the court has misdirected the jury as to the law, or has committed any other material error calculated to injure the rights of the defendant;

3. Where the verdict has been decided by lot, or in any other manner than by a fair expression of opinion by the jurors;

4. Where a juror has received a bribe to convict, or has been guilty of any other corrupt conduct;

5. Where any material witness of the defendant has, by force, threats or fraud, been prevented from attending the court, or where any written evidence, tending to establish the innocence of the defendant, has been intentionally destroyed or removed so that it could not be produced upon the trial;

6. Where new testimony material to the defendant has been discovered since the trial. A motion for a new trial on this ground shall be governed by the rules which regulate civil suits;

7. Where the jury, after having retired to deliberate upon a case, has received other testimony; or where a juror has conversed with any person in regard to the case; or where any juror at any time during the trial or after retiring for deliberation, may have become so intoxicated as to render it probable his verdict was influenced thereby. The mere drinking of liquor by a juror shall not be sufficient ground for a new trial;

8. Where, from the misconduct of the jury, the court is of opinion that the defendant has not received a fair and impartial trial. It shall be competent to prove such misconduct by the voluntary affidavit of a juror; and the verdict may, in like manner, be sustained by such affidavit; and

9. Where the verdict is contrary to law and evidence. A verdict is not contrary to the law and evidence, within the meaning of this provision, where the defendant is found guilty of an offense of inferior grade to, but of the same nature as, the offense proved.

10. Should the jury assess the death penalty when the State has made known, under the provisions of this Code, that it will not seek the death penalty, the court shall, upon written motion of the defendant, immediately grant a new trial.

Art. 40.04 [754] [838] [818] In misdemeanors

New trials in misdemeanor cases may be granted for any cause specified in the preceding Article, except that the first cause specified in subdivision 1 of said Article shall not be available as ground for new trial in any misdemeanor case where the maximum punishment may be a fine only.

Art. 40.05 [755] [839] [819] Time to apply for new trial; amendment

A motion for new trial shall be filed within ten days after conviction as evidenced by the verdict of the jury, and may be amended by leave of the court at any time before it is acted on within twenty days after it is filed. Such motion shall be presented to the court within ten days after the filing of the original or amended motion, and shall be determined by the court within twenty days after the filing of the original or amended motion, but for good cause shown the time for filing or amending may be extended by the court, but shall not delay the filing of the record on appeal.

A motion for new trial may be filed after the expiration of the term at which said conviction resulted, either during a new term of court or during vacation, and a motion for new trial may be determined in vacation or at a new term of court, and need not be determined during the term at which filed.

Art. 40.06 [757] [841] [821] State may controvert motion

The State may take issue with the defendant upon the truth of any cause set forth in the motion for a new trial; and in such case, the judge shall hear evidence, by affidavit or otherwise, and determine the issue.

Art. 40.07 [758] [842] [822] Judge not to discuss evidence

In granting or refusing a new trial, the judge shall not sum up, discuss or comment upon the evidence in the case, but shall simply grant or refuse the motion, without prejudice to either party.

Art. 40.08 [759] [843] [823] Effect of a new trial

The effect of a new trial is to place the cause in the same position in which it was before any trial had taken place. The former conviction shall be regarded as no presumption of guilt, nor shall it be alluded to in the argument.

Art. 40.09 The record on appeal

1. Record in appeals to the Court of Criminal Appeals

In all cases appealable by law to the Court of Criminal Appeals, the clerk of the court that entered the conviction sought to be appealed from shall, under his hand and seal of the court, make and prepare an appellate record comprising a true copy of the matter designated by the parties, but shall always include, whether designated or not, copies of the material pleadings, material docket entries made by the court, the charge, verdict, judgment, sentence, notice of appeal, any appeal bond, all written motions and pleas and orders of the court, and bills of exception. The matter so prepared shall be assembled under one cover and shall constitute the record on appeal. The pages of this record shall be numbered consecutively and there shall be an index prepared by the clerk showing the location of each document in the record. The record shall be made in duplicate and one copy shall be retained by the clerk for use by the parties with permission of the court.

2. Designation of material for inclusion in the record

Each party may file with the clerk a written designation specifying matter for inclusion in the record. The failure of the clerk to include designated matter will not be ground for complaint on appeal if the designation specifying such matter be not filed with the clerk within sixty days after notice of appeal is given.

3. Statement of facts and other proceedings

The record may include a transcription of all or any part of the proceedings shown by notes of the report to have occurred before, during or after the trial and same will constitute the statement of facts for the appeal. A transcription applicable to any proceeding occurring before or within a period of ninety days after notice of appeal shall be filed with the clerk for inclusion in the record not later than the end of such period. A transcription of notes applicable to any proceeding occurring after the end of such period shall be filed with the clerk for inclusion in the record not later than thirty days after the end of such proceeding. The times herein provided for filing transcription of the notes of the reporter may be extended by the court for good cause shown, and the court shall have the power, in term time or vacation, on application for good cause to extend for as

many times as deemed necessary the time for preparation and filing of the transcription, and the approval of the record after the expiration of the time provided by law for its approval shall be sufficient proof that the time for filing the transcription was properly extended, and the transcription so filed shall be construed as having been filed within the time required by law.

4. Effect of transcription of reporter's notes

At the request of either party the court reporter shall take shorthand notes of all trial proceedings, including voir dire examination, objections to the court's charge, and final arguments. He is not entitled to any fee in addition to his salary for taking these notes. A transcription of the reporter's notes when certified to by him and included in the record shall establish the occurrence and existence of all testimony, argument, motions, pleas, objections, exceptions, court actions, refusals of the court to act and other events thereby shown and no further proof of the occurrence or existence of same shall be necessary on appeal; provided, however, that the court shall have power, after hearing, to enter and make part of the record any finding or adjudication which the court may deem essential to make any such transcription speak the truth in any particular in which the court finds it does not speak the truth and any such finding or adjudication having support in the evidence shall be final.

5. Responsibility for obtaining transcription of reporter's notes

A party desiring to have included in the record a transcription of notes of the reporter shall have the responsibility of obtaining such transcription and furnishing same to the clerk in duplicate in time for inclusion in the record and defendant shall pay therefor. The court will order the reporter to make such transcription without charge to defendant if the court finds, after hearing in response to affidavit by defendant that he is unable to pay or give security therefor. Upon certificate of the court that this service has been rendered, payment therefor shall be made from the general funds by the county in which the offense is alleged to have been committed. The court reporter shall report any portion of the proceedings requested by either party or directed by the court.

6. Bills of exception

(a) A party desiring to have the record disclose some action, testimony, evidence, proceeding, objection, exception or other event or occurrence not otherwise shown by the record may utilize a bill of exception for this purpose. Bills of exception must be filed with the clerk and presented to the trial judge within ninety days after notice of appeal is given, and for good cause shown, the judge trying the cause may further extend the time in which to file the bills of exception and shall have the power, in term-time or in vacation, upon application for good cause to extend for as many times as deemed necessary the time for preparation and filing of bills of exception and the approval for any bill of exception by the judge trying the cause after the expiration of the ninety day period shall be sufficient proof that the time for filing was properly extended, and any bill of exception so filed shall be construed to have been filed within the time required by law. The clerk shall notify the court of each bill immediately up-

on its being filed. The court shall either approve the bill without qualification or shall approve it subject to qualification or refuse it, setting forth in the qualification or refusal any reasons that may seem proper to the judge. Notice of the court's action in qualifying or refusing a bill shall be immediately given by the clerk to the party filing the bill or to his counsel, and such party, if unwilling to accept the court's qualification or refusal, may not later than fifteen days after receipt of such notice, file a by-stander's bill of exception, and the clerk shall include same in the record. A bill of exception will be deemed approved without qualification if it be not acted on by the trial judge within a period of one hundred days after notice of appeal is given.

(b) A bill of exception shall be a necessary predicate for appellate review only if the matter complained of is not otherwise shown by the record as herein provided. Errors otherwise shown by the record may be reviewed on appeal without the necessity of any bill of exception. If the date of filing with the clerk of any document in the record is shown by notation of the clerk thereon, no further proof of such date or of the fact of the filing of the document with the clerk shall be necessary. If the transcription of the reporter's notes or any court order or docket entry by the court shows the occurrence or existence of any particular action by the court or refusal of the court to act or any objection or exception or any other event, no further proof of the occurrence or existence of same shall be necessary.

(c) Formal exceptions to rulings on evidence, opinions or other actions of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary, it is sufficient that a party, at the time the ruling, opinion or action of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and his grounds therefor; and if a party has no opportunity to object to the ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him.

(d) (1) When the court refuses to admit offered testimony or other evidence, the party offering same shall as soon as practicable but before the court's charge is read to the jury be allowed, out of the presence of the jury, to adduce the excluded testimony or other evidence before the reporter, and a transcription of his notes showing such testimony or other evidence and any objections and exceptions of the party offering same shall, when certified to by the reporter and included in the record, establish the nature of such testimony or other evidence, and the objections and exceptions made in connection with the court's exclusion of such testimony or other evidence and no bills of exception shall be essential to authorize appellate review of the question whether the court erred in excluding such testimony or other evidence. The court, in its discretion, may allow an offer of proof in the form of a concise statement by the party offering the same of what the excluded evidence would show, to be made before the reporter out of the presence of the jury as an alternative method of causing the record to show such excluded testimony or other evidence, and in the event the record contains transcription of the reporter's notes showing such an offer of proof the same shall be accepted on appeal as establishing what such excluded testimony or other evidence would have consisted of had it been admitted into evidence.

(2) When testimony or other evidence has been excluded by the court over objection of the party offering same, no further offer of the same need be made to preserve the claimed error.

(3) When the court hears objections to offered evidence out of the presence of the jury and rules that such evidence shall be admitted, then in that event such objections shall be deemed to apply to such evidence when it is admitted before the jury without the necessity of such objections being renewed in the presence of the jury.

7. Approval of the record

Notice of completion of the record shall be made by the clerk by certified mail to the parties or their respective counsel. If neither files and presents to the court in writing any objection to the record, within fifteen days after the mailing of such notice and if the court has no objection to the record, he shall approve the same. If such objection be made, or if the court fails to approve the record within such fifteen-day period, the court shall set the matter down for hearing, and, after hearing, shall enter such orders as may be appropriate to cause the record to speak the truth and the findings and adjudications in such orders, if supported by evidence, shall be final. In its discretion, the court may require the attendance of the defendant at such hearing. Such proceedings shall be included in the record, and the entire record approved by the court.

8. Filing approved record with clerk

The record, on approval by the court, shall be filed with the clerk of the trial court.

9. Defendant's brief

Within thirty days after approval of the record by the court, or within such additional period as the court may in its discretion authorize, the defendant shall file with the clerk of the trial court his appellate brief. This brief shall set forth separately each ground of error of which defendant desires to complain on appeal and may set forth such arguments as he deems appropriate. Each ground of error shall briefly refer to that part of the ruling of the trial court, charge given to the jury, or charge refused, admission or rejection of evidence or other proceedings which are designated to be complained of in such way as that the point of objection can be clearly identified and understood by the court. If the defendant includes in his brief arguments supporting a particular ground of error they shall be construed with it in determining what point of objection is sought to be presented by such ground of error; and if the court, upon consideration of such ground of error in the light of arguments made in support thereof in the brief, can identify and understand such point of objection the same shall be reviewed notwithstanding any generality, vagueness or other technical defect that may exist in the language employed to set forth such ground of error.

10. The State's brief

Within thirty days after defendant files his brief with the clerk of the trial court, or within such additional period as the trial court may in its discretion authorize, the State shall file its brief with the clerk of the trial court. Each party, upon filing brief with the clerk

of the trial court shall cause true copy thereof to be delivered to the opposing party or to the latter's counsel.

11. Oral arguments

The trial court may require oral arguments on the briefs and, if so, shall cause the clerk to notify counsel for both sides of the time and place for such arguments.

12. Trial court's duty

It shall be the duty of the trial court to decide from the briefs and oral arguments, if any, whether defendant should be permitted to withdraw his notice of appeal and be granted a new trial by the trial court. This duty shall be performed within the period of thirty days immediately after the State's brief is filed, or, if none be filed, then within the period of thirty days immediately after the last day on which the State's brief could be timely filed. Omission of the court to perform this duty within such period shall constitute refusal of the court to grant a new trial to defendant.

13. Transmission of record to Court of Criminal Appeals

Upon refusal of the court to grant defendant a new trial, the clerk shall thereupon promptly transmit the record and briefs to the Court of Criminal Appeals, in which court all grounds of error and arguments in support thereof urged in defendant's brief in the trial court shall be reviewed, as well as any unassigned error which in the opinion of the Court of Criminal Appeals should be reviewed in the interest of justice.

14. Agreed statement

The parties may agree, with the approval of the trial court, upon a brief statement of the case and of the facts proven as will enable the appellate court to determine whether there is error in the trial. Such statement shall be copied into the record in lieu of the proceedings themselves.

15. Order as to original papers or exhibits

Whenever the trial court is of the opinion that original papers or exhibits should be inspected by the appellate court or sent to the appellate court in lieu of copies, it may make such order therefor and for the safekeeping, transportation and return thereof as it deems proper. The appellate court on its own initiative may direct the clerk of the trial court to send to it any original paper or exhibit for its inspection.

Art. 40.10 [760c] Application of Civil Statutes

The provisions of the rules of civil procedure, insofar as the same are applicable and not in conflict with the provisions of this Code, as such rules now exist or may hereafter exist, shall govern bills of exception and statements of fact.

CHAPTER FORTY-ONE

ARREST OF JUDGMENT

Art.
41.01 Motion in arrest of judgment.
41.02 Time to make motion.
41.03 Granted for substantial defect.
41.04 Want of form.
41.05 Effect of arresting judgment.

Article 41.01 [761] [847] [825] Motion in arrest of judgment

A motion in arrest of judgment is an oral or written suggestion to the court on the part of defendant that judgment has not been legally rendered against him. The record must show the grounds of the motion.

Art. 41.02 [762] [848] [826] Time to make motion

A motion must be made within ten days after conviction.

Art. 41.03 [763] [849] [827] Granted for substantial defect

Such motion shall be granted upon any ground which may be good upon exception to an indictment or information for any substantial defect therein.

Art. 41.04 [764] [850] [828] Want of form

No judgment shall be arrested for want of form.

Art. 41.05 [765] [851–852] Effect of arresting judgment

The effect of arresting a judgment is to place the defendant in the same position he was before the indictment or information was presented; and if the court be satisfied from the evidence that he may be convicted upon a proper indictment or information, he shall be remanded into custody or bailed. If not so satisfied, the defendant shall be discharged.

CHAPTER FORTY-TWO

JUDGMENT AND SENTENCE

Art.
42.01 Judgment.
42.02 Sentence.
42.03 Pronouncing sentence; time; credit for time spent in jail between arrest and sentence or pending appeal.
42.04 Sentence when appeal is taken.
42.05 If court is about to adjourn.
42.06 Sentence nunc pro tunc.
42.07 Reasons to prevent sentence.
42.08 Cumulative or concurrent sentence.
42.09 Indeterminate sentence.
42.10 Satisfaction of judgment as in misdemeanor convictions.
42.11 Uniform Act for out-of-State parolee supervision.
42.12 Adult Probation and Parole Law.
42.13 Misdemeanor Probation Law.
42.14 In absence of defendant.
42.15 As to fine.
42.16 On other judgment.

Article 42.01 [766] [853] [831] Judgment

A "judgment" is the declaration of the court entered of record, showing:

1. The title and number of the case;

2. That the case was called for trial and that the parties appeared;

3. The plea of the defendant;

4. The selection, impaneling and swearing of the jury;

5. The submission of the evidence;

6. That the jury was charged by the court;

7. The return of the verdict;

8. The verdict;

9. In the case of a conviction, that it is considered by the court that the defendant is adjudged to be guilty of the offense as found by the jury; or in case of acquittal, that the defendant be discharged;

10. That the defendant be punished as has been determined.

The provisions of this Article shall apply to both felony and misdemeanor cases.

Art. 42.02 [767] [854] [832] Sentence

A "sentence" is the order of the court in a felony or misdemeanor case made in the presence of the defendant, except in misdemeanor cases where the maximum possible punishment is by fine only, and

entered of record, pronouncing the judgment, and ordering the same to be carried into execution in the manner prescribed by law.

Art. 42.03 [768] [855] [833] Pronouncing sentence; time; credit for time spent in jail between arrest and sentence or pending appeal

If a new trial is not granted, nor judgment arrested in felony and misdemeanor cases, the sentence shall be pronounced in the presence of the defendant at any time after the expiration of the time allowed for making the motion for a new trial or the motion in arrest of judgment; provided that in all criminal cases the judge of the court in which defendant was convicted may within his discretion, give the defendant credit on his sentence for the time, or any part thereof, which said defendant has spent in jail in said cause, from the time of his arrest and confinement until his sentence by the trial court; and provided further, that in all cases where the defendant has been tried for any violation of the laws of the State of Texas, and has been convicted and has appealed from said judgment and sentence of conviction, and where said cause has been affirmed by the Court of Criminal Appeals, and after receipt of the mandate by the clerk of the trial court, the judge is authorized to again call said defendant before him; and if pending appeal, the defendant has not made bond and has remained in jail pending the time of such appeal, said trial judge may then in his discretion resentence the defendant, and may subtract from the original sentence pronounced upon the defendant, the length of time the defendant has lain in jail pending such appeal, noting any credit allowed upon the mandate, which credit shall be allowed by the Texas Department of Corrections in all computations affecting the eligibility of the defendant for parole or discharge. Where jail time has been awarded, the trial judge may, when in his discretion the ends of justice would best be served, sentence the defendant to serve his sentence during his off-work hours, or on week-ends. When such a sentence is permitted by the trial judge it must be served on consecutive days or consecutive week-ends. The trial judge may require bail of the defendant to insure the faithful performance of the sentence. The trial judge may attach conditions regarding the employment, travel, and other conduct of the defendant during the performance of such a sentence.

Art. 42.04 [769] [856] [834] Sentence when appeal is taken

When an appeal is taken from a death penalty, sentence shall not be pronounced, but shall be suspended until the decision of the Court of Criminal Appeals has been received. In all other cases, except where imposition of sentence has been suspended in probation cases, sentence shall be pronounced before the appeal is taken. Upon the affirmance of the judgment by the appellate court, the clerk shall at once send its mandate to the clerk of the Court from which the appeal was taken, there to be duly recorded.

Art. 42.05 [770] [857] [835] If court is about to adjourn

The time limit within which any act is to be done within the meaning of this Code shall not be affected by the expiration of the term of the court.

Art. 42.06 [772] [859] [837] Sentence nunc pro tunc

If there is a failure from any cause whatever to enter judgment and pronounce sentence, the judgment may be entered and sentence pronounced at any subsequent time, unless a new trial has been granted, or the judgment arrested, or an appeal has been taken. Any time served or punishment suffered from the time the judgment and sentence should have been entered and pronounced and until finally entered shall be credited upon the sentence finally pronounced.

Art. 42.07 [773] [860-861] Reasons to prevent sentence

Before pronouncing sentence, the defendant shall be asked whether he has anything to say why the sentence should not be pronounced against him. The only reasons which can be shown, on account of which sentence cannot be pronounced, are:

1. That the defendant has received a pardon from the proper authority, on the presentation of which, legally authenticated, he shall be discharged.

2. That the defendant is insane; and if sufficient proof be shown to satisfy the court that the allegation is well-founded, no sentence shall be pronounced. Where there is sufficient time left, a jury may be impaneled to try the issue. Where sufficient time does not remain, the court shall order the defendant to be confined safely until the next term of the court, and shall then cause a jury to be impaneled to try such issue;

3. Where there has not been a motion for a new trial or a motion in arrest of judgment made, the defendant may answer that he has good grounds for either or both of these motions and either or both motions may be immediately entered and disposed of, although more than ten days may have elapsed since the rendition of the verdict; and

4. When a person who has been convicted escapes after conviction and before sentence and an individual supposed to be the same has been arrested he may before sentence is pronounced, deny that he is the person convicted, and an issue be accordingly tried before a jury as to his identity.

Art. 42.08 [774] [840] [862] Cumulative or concurrent sentence

When the same defendant has been convicted in two or more cases, and the punishment assessed in each case is confinement in an institution operated by the Department of Corrections or the jail for a term of imprisonment, judgment and sentence shall be pronounced in each case in the same manner as if there had been but one conviction, except that in the discretion of the court, the judgment in the second

and subsequent convictions may either be that the punishment shall begin when the judgment and sentence in the preceding conviction has ceased to operate, or that the punishment shall run concurrently with the other case or cases, and sentence and execution shall be accordingly.

Art. 42.09 [775] Indeterminate sentence

If the verdict fixes the punishment at confinement in an institution operated by the Department of Corrections for more than the minimum term, the judge in passing sentence shall pronounce an indeterminate sentence, fixing in such sentence as the minimum the time provided by law as the lowest term in an institution operated by the Department of Corrections and as the maximum the term stated in the verdict. In cases where no appeal is taken, the sentence shall begin to run on the day same is pronounced, but where an appeal is taken and the defendant is in jail or in an institution operated by the Department of Corrections, his sentence shall begin to run with the date of the mandate, and in the event any credit has been allowed under the provisions of Article 42.03, the credit shall be fully subtracted from the sentence and reflected on the mandate and commitment, and in every such case the commitment shall so state. Where an appeal is taken and the defendant is at large on bond when the case is affirmed the clerk of the trial court, on receipt of the mandate from the clerk of the Court of Criminal Appeals, shall issue a commitment, and when the defendant is taken into custody under such commitment, the officer executing same shall endorse thereon the date the defendant was taken into custody, and the endorsement on this commitment shall constitute the date on which the sentence shall begin to run, and such defendant named in the commitment shall be admitted to an institution operated by the Department of Corrections by virtue of such commitment.

Art. 42.10 [781a] Satisfaction of judgment as in misdemeanor convictions

When a person is convicted of a felony, and the punishment assessed is only a fine or a term in jail, or both, the judgment may be satisfied in the same manner as a conviction for a misdemeanor is by law satisfied.

Art. 42.11 [781c] Uniform Act for out-of-State parolee supervision

Sec. 1. This Act may be cited as the Uniform Act for out-of-State parolee supervision.

Sec. 2. The Governor of this State is hereby authorized and directed to execute a compact on behalf of the State of Texas with any of the United States legally joining therein in the form substantially as follows:

A COMPACT

Entering into by and among the contracting state, signatories hereto, with the consent of the Congress of the United States of Ameri-

ca, granted by an Act entitled "An Act granting the consent of Congress to any two or more States to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and for other purposes".

The contracting States solemnly agree:

(1) That it shall be competent for the duly constituted judicial and administrative authorities of a State party to this compact (herein called "sending State"), to permit any person convicted of an offense within such State and placed on probation or released on parole to reside in any other State party to this compact (herein called "receiving State"), while on probation or parole, if

(a) Such person is in fact a resident of or has his family residing within the receiving State and can obtain employment there; and

(b) Though not a resident of the receiving State and not having his family residing there, the receiving State consents to such person being sent there.

Before granting such permission, opportunity shall be granted to the receiving State to investigate the home and prospective employment of such person.

A resident of the receiving State, within the meaning of this section is one who has been an actual inhabitant of such State continuously for more than one year prior to his coming to the sending State and has not resided within the sending State more than six continuous months immediately preceding the commission of the offense for which he has been convicted.

(2) That each receiving State will assume the duties of visitation of and supervision over probationers or parolees of any sending State and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees.

(3) That duly accredited officers of a sending State may at all times enter a receiving State and there apprehend and retake any person on probation or parole. For that purpose no formalities will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of States party hereto, as to such persons. The decision of the sending State to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving State; provided, however, that if at the time when a State seeks to retake a probationer or parolee there should be pending against him within the receiving State any criminal charge, or he should be suspected of having committed within such State a criminal offense, he shall not be retaken without the consent of the receiving State until discharged from prosecution or from any imprisonment for such offense.

(4) That the duly accredited officers of the sending State will be permitted to transport prisoners being retaken through any and all States party to this compact, without interference.

(5) That the Governor of each State may designate an officer who, acting jointly with like officers of other contracting States, if and when appointed, shall promulgate such rules and regulations as

may be deemed necessary to more effectively carry out the terms of this compact.

(6) That this compact shall become operative immediately upon its execution by any State as between it and other State or States so executing. When executed it shall have the full force and effect of law within such State, the form of execution to be in accordance with the laws of the executing State.

(7) That this compact shall continue in force and remain binding upon each executing State until renounced by it. The duties and obligations hereunder of a renouncing State shall continue as to parolees or probationers residing therein at the time of withdrawal until retaken or finally discharged by the sending State. Renunciation of this compact shall be by the same authority which executed it, by sending six months notice in writing of its intention to withdraw from the compact to the other States party hereto.

Art. 42.12 [781d] Adult Probation and Parole Law

A. Purpose of Article and Definitions

Sec. 1. It is the purpose of this Article to place wholly within the State courts of appropriate jurisdiction the responsibility for determining when the imposition of sentence in certain cases shall be suspended, the conditions of probation, and the supervision of probationers, in consonance with the powers assigned to the judicial branch of this government by the Constitution of Texas. It is also the intent of this Article to provide for the release of persons on parole and for the method thereof, to designate the Board of Pardons and Paroles as the responsible agency of State government to recommend determination of paroles and to further designate the Board of Pardons and Paroles as responsible for the investigation and supervision of persons released on parole. It is the final purpose of this Article to remove from existing statutes the limitations, other than questions of constitutionality, that have acted as barriers to effective systems of probations and paroles in the public interest.

Sec. 2. This Article may be cited as the "Adult Probation and Parole Law".

Unless the context otherwise requires, the following definitions shall apply to the specified words and phrases as used in this Article:

a. "Courts" shall mean the courts of record having original criminal jurisdiction;

b. "Probation" shall mean the release of a convicted defendant by a court under conditions imposed by the court for a specified period during which the imposition of sentence is suspended;

c. "Parole" shall mean the release of a prisoner from imprisonment but not from the legal custody of the State, for rehabilitation outside of prison walls under such conditions and provisions for disciplinary supervision as the Board of Pardons and Paroles may determine. Parole shall not be construed to mean a commutation of sentence or any other form of executive clemency;

d. "Probation officer" shall mean either a person duly appointed by one or more courts of record having original criminal jurisdiction,

to supervise defendants placed on probation; or a person designated by such courts for such duties on a part-time basis;

e. "Parole officer" shall mean a person duly appointed by the Director of the Division of Parole Supervision and assigned the duties of investigating and supervising paroled prisoners to see that the conditions of parole are complied with;

f. "Board" shall mean the Board of Pardons and Paroles;

g. "Division" shall mean the Division of Parole Supervision of the Board of Pardons and Paroles; and

h. "Director" shall mean the Director of the Division of Parole Supervision.

B. Probations

Sec. 3. The judges of the courts of the State of Texas having original jurisdiction of criminal actions, when it shall appear to the satisfaction of the court that the ends of justice and the best interests of the public as well as the defendant will be subserved thereby, shall have the power, after conviction or a plea of guilty for any crime or offense, where the maximum punishment assessed against the defendant does not exceed ten years imprisonment, to suspend the imposition of the sentence and may place the defendant on probation or impose a fine applicable to the offense committed and also place the defendant on probation as hereinafter provided. Any such person placed on probation, whether in a trial by jury or before the court, shall be under the supervision of such court.

Sec. 3a. Where there is a conviction in any court of this State and the punishment assessed by the jury shall not exceed ten years, the jury may recommend probation upon written sworn motion made therefor by the defendant, filed before the trial begins. When the trial is to a jury, and the defendant has no counsel, the court shall inform the defendant of his right to make such motion, and the court shall appoint counsel to prepare and present same, if desired by the defendant. In no case shall probation be recommended by the jury except when the sworn motion and proof shall show, and the jury shall find in their verdict that the defendant has never before been convicted of a felony in this or any other State. This law is not to be construed as preventing the jury from passing on the guilt of the defendant, but he may enter a plea of not guilty. In all eligible cases, probation shall be granted by the court if the jury recommends it in their verdict.

If probation is granted by the jury the court may impose only those conditions which are set forth in Section 6 hereof.

Sec. 3b. Where probation is recommended by the verdict of a jury as provided for in Sec. 3a above, a defendant's probation shall not be revoked during his good behavior, so long as he is within the jurisdiction of the court and his residence is known, except in accordance with the provisions of Sec. 8 of this Article. If such a defendant has no counsel, it shall be the duty of the court to inform him of his right to show cause why his probation should not be revoked; and if such a defendant requests such right, the court shall appoint counsel in accordance with Articles 26.04 and 26.05 of this Code to prepare and present the same; and in all other respects the procedure set forth in said Sec. 8 of this Article shall be followed.

Sec. 3c. Nothing herein shall limit the power of the court to grant a probation of sentence regardless of the recommendation of the jury or prior conviction of the defendant.

Sec. 4. When directed by the court, a probation officer shall fully investigate and report to the court in writing the circumstances of the offense, criminal record, social history and present condition of the defendant. Whenever practicable, such investigation shall include a physical and mental examination of the defendant. If a defendant is committed to any institution the probation officer shall send a report of such investigation to the institution at the time of commitment.

Sec. 5. Only the court in which the defendant was tried may grant probation, fix or alter conditions, revoke the probation, or discharge the defendant, unless the court has transferred jurisdiction of the case to another court with the latter's consent. After a defendant has been placed on probation, jurisdiction of the case may be transferred to a court of the same rank in this State having geographical jurisdiction where the defendant is residing or where a violation of the conditions of probation occurs. Upon transfer, the clerk of the court of original jurisdiction shall forward a transcript of such portions of the record as the transferring judge shall direct to the court accepting jurisdiction, which latter court shall thereafter proceed as if the trial and conviction had occurred in that court. Any court having geographical jurisdiction where the defendant is residing or where a violation of the conditions of probation occurs may issue a warrant for his arrest, but the determination of action to be taken after arrest shall be only by the court having jurisdiction of the case at the time the action is taken.

Sec. 6. The court having jurisdiction of the case shall determine the terms and conditions of probation and may, at any time, during the period of probation alter or modify the conditions; provided, however, that the clerk of the court shall furnish a copy of such terms and conditions to the probationer, and shall note the date of delivery of such copy on the docket. Terms and conditions of probation may include, but shall not be limited to, the conditions that the probationer shall:

a. Commit no offense against the laws of this State or of any other State or of the United States;

b. Avoid injurious or vicious habits;

c. Avoid persons or places of disreputable or harmful character;

d. Report to the probation officer as directed;

e. Permit the probation officer to visit him at his home or elsewhere;

f. Work faithfully at suitable employment as far as possible;

g. Remain within a specified place;

h. Pay his fine, if one be assessed, and all court costs whether a fine be assessed or not, in one or several sums, and make restitution or reparation in any sum that the court shall determine; and

i. Support his dependents.

Sec. 7. At any time, after the defendant has satisfactorily completed one-third of the original probationary period or two years of probation, whichever is the lesser, the period of probation may be reduced or terminated by the court. Upon the satisfactory fulfillment of the conditions of probation, and the expiration of the period of probation, the court, by order duly entered, shall amend or modify the original sentence imposed, if necessary, to conform to the probation period and shall discharge the defendant. In case the defendant has been convicted or has entered a plea of guilty or a plea of nolo contendere, and the court has discharged the defendant hereunder, such court may set aside the verdict or permit the defendant to withdraw his plea, and shall dismiss the accusation, complaint, information or indictment against such defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he has been convicted or to which he has pleaded guilty, except that proof of his said conviction or plea of guilty shall be made known to the court should the defendant again be convicted of any criminal offense.

Sec. 8. At any time during the period of probation the court may issue a warrant for violation of any of the conditions of the probation and cause the defendant to be arrested. Any probation officer, police officer or other officer with power of arrest may arrest such defendant without a warrant upon the order of the judge of such court to be noted on the docket of the court. A probationer so arrested may be detained in the county jail or other appropriate place of detention until he can be taken before the court. Such officer shall forthwith report such arrest and detention to such court. Thereupon, the court shall cause the defendant to be brought before it and after a hearing without a jury, may either continue or revoke the probation and, if probation is revoked, shall proceed to dispose of the case as if there had been no probation.

Any probationer who removes himself from the State of Texas without permission of the court having jurisdiction of the case, shall be deemed and considered a fugitive from justice and shall be subject to extradition as now provided by law. No part of the time that the defendant is on probation shall be considered as any part of the time that he shall be sentenced to serve. The right of the probationer to appeal to the Court of Criminal Appeals for a review of the trial and conviction, as provided by law, shall be accorded the probationer at the time he is placed on probation. When he is notified that his probation is revoked for violation of the conditions of probation and he is called on to serve a sentence in a jail or in an institution operated by the Department of Corrections, he may appeal the revocation.

Sec. 9. If, for good and sufficient reasons, probationers desire to change their residence within the State, such transfer may be effected by application to their supervising probation officer, which transfer shall be subject to the court's consent and subject to such regulations as the court may require in the absence of a probation officer in the locality to which the probationer is transferred.

Sec. 10. For the purpose of providing adequate probation services, the district judge or district judges having original jurisdiction of criminal actions in the county or counties, if applicable, are authorized, with the advice and consent of the commissioners court as here-

inafter provided, to employ and designate the titles and fix the salaries of probation officers, and such administrative, supervisory, stenographic, clerical, and other personnel as may be necessary to conduct presentence investigations, supervise and rehabilitate probationers, and enforce the terms and conditions of probation. Only those persons who have successfully completed education in an accredited college or university and two years full time paid employment in responsible probation or correctional work with juveniles or adults, social welfare work, teaching or personnel work; or persons who are licensed attorneys with experience in criminal law; or persons who are serving in such capacities at the time of the passage of this Article and who are not otherwise disqualified by Section 31 of this Article, shall be eligible for appointments as probation officers; providing that additional experience in any of the above work categories may be substituted year for year for the required college education, with a maximum substitution of two years.

It is the further intent of this Article that the caseload of each probation officer not substantially exceed seventy-five probationers.

Where more than one probation officer is required, the judge or judges shall appoint a chief adult probation officer or director, who, with their approval, shall appoint a sufficient number of assistants and other employees to carry on the professional, clerical, and other work of the court.

The judge or judges, with the approval of the juvenile board of the county, may authorize the chief probation or chief juvenile officer to establish a separate division of adult probation and appoint adult probation officers and such other personnel as required. It is the further intent of this Act that the same person serving as a probation officer for juveniles shall not be required to serve as a probation officer for adults and vice-versa.

The judge or judges may, with the approval of the director of parole supervision, designate a parole officer or supervisor employed by the Division of Parole Supervision as a probation officer for the county or district.

Probation officers shall be furnished transportation, or alternatively, shall be entitled to an automobile allowance for use of personal automobile on official business, under the same terms and conditions as is provided for sheriffs.

The salaries of personnel, and other expenses essential to the adequate supervision of probationers, shall be paid from the funds of the county or counties comprising the judicial district or geographical area served by such probation officers. In instances where a district court has jurisdiction in two or more counties, the total expenses of such probation services shall be distributed approximately in the same proportion as the population in each county bears to the total population of all of those counties, according to the last preceding or any future Federal Census. In all the instances of the employment of probation officers, the responsible judges and county commissioners are authorized to accept grants or gifts from other political subdivisions of the State or associations and foundations, for the sole purpose of financing adequate and effective probationary programs in the various parts of the State. For the purposes of this Act, the municipalities of

this State are specifically authorized to grant and allocate such sums of money as their respective governing bodies may approve to their appropriate county governments for the support and maintenance of effective probationary programs. All grants, gifts, and allocations of the character and purpose described in this section shall be handled and accounted for separately from other public funds of the county.

Sec. 11. For the purpose of determining when fees are to be paid to any officer or officers, the placing of the defendant on probation shall be considered a final disposition of the case, without the necessity of waiting for the termination of the period of probation or suspension of sentence.

Sec. 12. The provisions of Section 10 and 11 above are also applicable to Article 42.13.

C. Paroles

Sec. 12. The Board of Pardons and Paroles created by Article 4, Section 11 of the Constitution of this State, shall administer the provisions of this Act respecting determinations of which prisoners shall be paroled from an institution operated by the Department of Corrections, the conditions of such paroles, and may recommend the revocation of paroles by the Governor.

Sec. 13. The members of the Board shall give full time to the duties of their office and shall be paid such salaries as the Legislature may determine in Appropriation Acts. The members of the Board shall elect one of their number as chairman, who shall serve for a period of two years and until his successor is elected and qualified.

The Board shall meet at the call of the chairman and from time to time as may otherwise be determined by majority vote of the Board. A majority of the Board shall constitute a quorum for the transaction of all business.

The Board shall adopt an official seal of which the courts shall take judicial notice. Decisions of the Board shall be by majority vote.

The Board shall keep a record of its acts and shall notify each institution of its decision relating to the persons who are to have been confined therein. At the close of each fiscal year the Board shall submit to the Governor and to the Legislature a report with statistical and other data of its work.

All minutes of the Board and decisions relating to parole, pardon and clemency shall be matters of public record and subject to public inspection at all reasonable times.

Sec. 14. The necessary office quarters shall be provided for the Board in the manner that the same are furnished to other departments, boards, commissions, bureaus and offices of the State.

Sec. 15. The Board is hereby authorized to release on parole, with the approval of the Governor, any person confined in any penal or correctional institution of this State, except persons under sentence of death, who has served one-fourth of the maximum sentence imposed, provided that in any case he may be paroled after serving fifteen years. Time served shall be a total calendar time served and all credits allowed under the laws governing the operation of the Department of Corrections, and executive clemency. All paroles shall issue upon order of the Board, duly adopted and approved by the Governor.

Within one year after a prisoner's admittance to the penal or correctional institution and at such intervals thereafter, as it may determine, the Board shall secure and consider all pertinent information regarding each prisoner, except any under sentence of death, including the circumstances of his offense, his previous social history and criminal record, his conduct, employment and attitude in prison, and the reports of such physical and mental examinations as have been made.

Before ordering the parole of any prisoner, the Board may have the prisoner appear before it and interview him. A parole shall be ordered only for the best interest of society, not as an award of clemency; it shall not be considered to be a reduction of sentence or pardon. A prisoner shall be placed on parole only when arrangements have been made for his proper employment or for his maintenance and care, and when the Board believes that he is able and willing to fulfill the obligations of a law-abiding citizen. Every prisoner while on parole shall remain in the legal custody of the institution from which he was released but shall be amenable to the orders of the Board.

The Board may adopt such other reasonable rules not inconsistent with law as it may deem proper or necessary with respect to the eligibility of prisoners for parole, the conduct of parole hearings, or conditions to be imposed upon parolees. Whenever an order for parole is issued it shall recite the conditions thereof in clear and intelligible language.

It shall be the duty of the Board at least ten days before ordering the parole of any prisoner or upon the granting of executive clemency by the Governor to notify the sheriff, the district attorney and the district judge in the county where such person was convicted that such parole or clemency is being considered by the Board or by the Governor.

If no parole officer has been assigned to the locality where a person is to be released on parole or executive clemency the Board shall notify the chairman of the Voluntary Parole Board of such county prior to the release of such person. The Board shall request such Voluntary Parole Board, in the absence of a parole office, for information which would herein be required of such duly appointed parole officer. This shall not, however, preclude the Board from requesting information from any public agency in such locality.

Sec. 16. It shall be the duty of any judge, district attorney, county attorney, police officer or other public official of the State, having information with reference to any prisoner eligible for parole, to sign in writing such information as may be in his possession or under his control to the Board, upon request of any member or employee thereof.

Sec. 17. It shall be the duty of all prison officials to grant to the members of the Board, or its properly accredited representatives, access at all reasonable times to any prisoner, to provide for the Board or such representatives facilities for communicating with and observing such prisoner, and to furnish to the Board such reports as the Board shall require concerning the conduct and character of any prisoner in their custody and any other facts deemed by the Board pertinent in determining whether such prisoner shall be paroled.

Sec. 18. The Board shall formulate rules as to the submission and presentation of information and arguments to the Board for and in behalf of any parolee under the jurisdiction of the Board.

All persons presenting information or arguments to the Board shall submit therewith an affidavit stating whether any fee has been paid or is to be paid for their services in the case, other than a duly licensed attorney, the amount of such fee, if any, and by whom such fee is paid or to be paid.

Sec. 19. The Board shall have power to issue subpoenas requiring the attendance of such witnesses and the production of such records, books, papers, and documents as it may deem necessary for investigation of the case of any person before it. Subpoenas may be signed and oath administered by any member of the Board. Subpoenas so issued may be served by a sheriff, constable, police, parole, or probation officer, or other law enforcement officer, in the same manner as similar process in courts of record having original jurisdiction of criminal actions. Any person who testifies falsely or fails to appear when subpoenaed, or fails or refuses to produce such material pursuant to the subpoena, shall be subject to the same orders and penalties to which a person before a court is subject. Any courts of record having original jurisdiction of criminal actions upon application of the Board, may in their discretion compel the attendance of witnesses, the production of such material and the giving of testimony before the Board, by an attachment for contempt or otherwise in the same manner as production of evidence may be compelled before such courts of record having original jurisdiction of criminal actions.

Sec. 20. The Board shall have the power and duty to make rules for the conduct of persons placed on parole by the Board.

Sec. 21. Upon order by the Governor, the Board is authorized to issue a warrant for the return of any paroled prisoner to the institution from which he was paroled. Such warrant shall authorize all officers named therein to return such paroled prisoner to actual custody in the penal institution from which he was paroled. Pending hearing, as hereinafter provided, upon any charge of parole violation, the prisoner shall remain incarcerated in such institution.

A parolee for whose return a warrant has been issued by the Board shall, after the issuance of such warrant, be deemed a fugitive from justice and if it shall appear that he has violated the provisions of his parole, then the time from the issuing of such warrant to the date of his arrest shall not be counted as any part of the time to be served under his sentence. The law now in effect concerning the right of the State of Texas to extradite persons and return fugitives from justice, and Article 42.11 of this Code concerning the waiver of all legal requirements to obtain extradition of fugitives from justice, from other states to this State, shall not be impaired by this Act and shall remain in full force and effect.

Sec. 22. Whenever a paroled prisoner is accused of a violation of his parole on information and complaint by a law enforcement officer or parole officer, he shall be entitled to be heard on such charges before the Board under such rules and regulations as the Board may adopt; providing, however, said hearing shall be held within forty-five days of the date of arrest and at a time and place set by the Board.

When the Board has heard the facts, it may recommend to the Governor that the parole be continued, or revoked, or modified in any manner the evidence may warrant. When the Governor revokes a prisoner's parole, he may be required to serve the portion remaining of the sentence on which he was released on parole, such portion remaining to be calculated without credit for the time from the date of his release on parole to the date of his arrest or charge of parole violation.

Sec. 23. In order to complete the parole period, a parolee shall be required to serve out the whole term for which he was sentenced, subject to the deduction of the time he had served prior to his parole and to any diminution of sentence earned for good behavior while imprisoned in the Department of Corrections. The time on parole shall be calculated as calendar time. This provision, however, shall not be construed so as to interfere with the constitutional power conferred upon the Governor to grant pardons and to commute sentences.

When any paroled prisoner has fulfilled the obligations of his parole and has served out his term as conditioned in the preceding paragraph, the Board shall make a final order of discharge and issue to the parolee a certificate of such discharge.

Sec. 24. Whenever any prisoner serving an indeterminate sentence, as provided by law, shall have served for twelve months on parole in a manner acceptable to the Board, it shall review the prisoner's record and make a determination whether to recommend to the Governor that the prisoner be pardoned and finally discharged from the sentence under which he is serving.

When any prisoner who has been paroled has complied with the rules and conditions governing his parole until the end of the term to which he was sentenced, and without a revocation of his parole, the Board shall report such fact to the Governor prior to the issuance of the final order of discharge, together with its recommendation as to whether the prisoner should be restored to citizenship.

Sec. 25. On request of the Governor the Board shall investigate and report to the Governor with respect to any person being considered by the Governor for pardon, commutation of sentence, reprieve, or remission of fine or forfeiture, and make recommendations thereon.

D. Supervision of Parolees

Sec. 26. The Board of Pardons and Paroles shall have general responsibility for the investigation and supervision of all prisoners released on parole. For the discharge of this responsibility, there is hereby created with the Board of Pardons and Paroles, a Division of Parole Supervision. Subject to the general direction of the Board of Pardons and Paroles, the Division of Parole Supervision, including its field staff shall be responsible for obtaining and assembling any facts the Board of Pardons and Paroles may desire in considering parole eligibility, and for investigating and supervising paroled prisoners to see that the conditions of parole are complied with, and for making such periodic reports on the progress of parolees as the Board may desire.

Sec. 27. All information obtained in connection with prison inmates applying for parole or individuals who may be on parole and

under the supervision of the division, or persons directly identified in any proposed plan of release for a parolee, shall be privileged information and shall not be subject to public inspection; provided, however, that all such information shall be available to the Governor and the Board of Pardons and Paroles upon request. It is further provided, that statistical and general information respecting the parole program and system, including the names of paroled prisoners and data recorded in connection with parole services, shall be subject to public inspection at any reasonable time.

Sec. 28. Salaries of all employees of the Division of Parole Supervision shall be governed by Appropriation Acts of the Legislature. The Board of Pardons and Paroles shall appoint a Director of the Division, and all other employees shall be selected by the Director, subject to such general policies and regulations as the Board may approve.

It is expressly provided, however, that no person may be employed as a parole officer or supervisor, or be responsible for the investigations, surveillance, or supervision of persons on parole, unless he meets the following qualifications together with any other qualifications that may be specified by the Director of the Division, with the approval of the Board of Pardons and Paroles; 26 to 55 years of age, with four years of successfully completed education in an accredited college or university, and two years of full time paid employment in responsible correctional work with adults or juveniles, social welfare work, teaching, or personnel work. Additional experience in the above categories may be substituted year for year for the required college education, with a maximum substitution for two years.

Sec. 29. Any parole officer or supervisor employed by the Division of Parole Supervision may, with the approval of the director, be designated as a probation officer by the judge of a court of the State having original jurisdiction of criminal actions. Any proportional part of the salary paid to a parole officer or supervisor so designated, however, in compensation for his service as a probation officer, shall be only with the prior written approval of the director; and all such proportional salary payments shall be periodically reported to the Governor and the Legislature by the director.

Sec. 30. In order to provide supervision of parolees or of persons granted executive clemency who reside in sparsely settled areas of the State and in localities not served by regularly employed parole officers, the Governor of this State is authorized to appoint chairmen of Voluntary Parole Boards for such areas or localities. The appointed chairman may, with the advice and approval of the Director of the Division of Parole Supervision, appoint additional members of such Voluntary Parole Boards. The term of service by such appointed chairmen of Voluntary Parole Boards shall not exceed the term of office of the appointing Governor; and the terms of service of locally appointed additional members of such Voluntary Parole Boards shall not exceed the terms of office of the director. However, it is expressly provided that the terms of service by such chairmen and additional members of Voluntary Parole Boards may be continued by appropriate reappointments. The chairman of the Voluntary Parole Board shall be responsible for assigning supervision of parolees to the members of such board.

Sec. 31. No person who is serving as a sheriff, deputy sheriff, constable, deputy constable, city policeman, Texas Ranger, state highway patrolman, or similar law enforcement officer, or as a prosecuting attorney, shall act as a parole officer or be responsible for the supervision of persons on parole.

Sec. 32. Any parole officer or supervisor employed by the Division of Parole Supervision may, upon request of the Governor or the Board of Pardons and Paroles and by direction of the director, be responsible for supervising persons placed on conditional pardon or furlough.

E. General Provisions

Sec. 33. The provisions of this Act shall not be construed to prevent or limit the exercise by the Governor of powers of executive clemency vested in him by the Constitution of this State.

Sec. 34. The provisions of this Act shall not apply to parole from institutions for juveniles.

Sec. 35. This Article shall not be deemed to alter or invalidate any probationary period fixed under statutes in force prior to the effective date of this Code or to limit the jurisdiction or power of a court to modify or terminate such probationary period. In other respects, persons placed on probation or parole prior to the effective date of this Code shall be amenable to the provisions of this Code insofar as it may be made applicable to them. All other actions pertaining to probations and paroles granted prior to the effective date of this Code shall be regulated according to the law in force at the time the probation or parole was granted.

Art. 42.13 Misdemeanor Probation Law

Section 1. All probation in misdemeanor cases shall be granted and administered under this Article.

Definitions

Sec. 2. In this Article, unless the context requires a different definition,

(1) "court" means a county court, or a county court at law or county criminal court or any court with original criminal jurisdiction, and includes the judge of any of these courts;

(2) "probation" means the release by a court under terms and for a period specified by the court of a defendant who has been found guilty of a misdemeanor;

(3) "probationer" means a defendant who is on probation.

Probation authorized in misdemeanor cases

Sec. 3. (a) A defendant who has been found guilty of a misdemeanor wherein the maximum permissible punishment is by confinement in jail or by a fine in excess of $200 may be granted probation if:

(1) he applies in writing to the court for probation before trial;

(2) he has never before been convicted in this or another jurisdiction of a felony or of a misdemeanor for which the maximum permissible punishment is by confinement in jail or exceeds a $200 fine;

(3) he has not been granted probation nor been under probation under this Act or any other Act in the preceding five years;

(4) he has paid all costs of his trial and so much of any fine imposed as the court directs; and

(5) the court believes that the ends of justice and the best interests of society and of the defendant will be served by granting him probation.

(b) If a defendant satisfies the requirements of Section 3(a) (1), (2), (3), and (4) of this Article, and the jury hearing his case recommends probation in its verdict, the court must grant the defendant probation. The court may, however, extend the term of the probationary period to any length of time not exceeding the maximum time of confinement allowed by law. In the event probation is revoked in accordance with Section 6, the judgment of the court shall not prescribe any penalty in excess of that imposed by the jury.

(c) A defendant's application for probation must be made under oath and must also contain statements (1) that he has never before been convicted in this or another jurisdiction of a felony or of a misdemeanor for which the maximum permissible punishment is by confinement in jail or exceeds a $200 fine, and (2) that he has not been granted probation nor been under probation under this Article or any other Article in the preceding five years. The application may contain what other information the court directs.

(d) When a defendant has applied for probation, the court during the trial of his case must receive competent evidence concerning the defendant's entitlement to probation.

Effect of probation

Sec. 4. (a) When a defendant is granted probation under the terms of this Act, the finding of guilt does not become final, nor may the court render judgment thereon, except as provided in Section 6 of this Article.

(b) The court shall record the fact and date that probation was granted on the docket sheet or in the minutes of the court. The court shall also note the period and terms of the probation, and the details of the judgment. The court's records may not reflect a final conviction, however, unless probation is later revoked in accordance with Section 6 of this Article.

Terms and supervision of probation

Sec. 5. (a) The period and terms of probation shall be determined by the court granting it. Except as provided in Subsection (d) of this Section, a probationer is under the supervision of the court granting him probation.

(b) The period and terms of probation shall be designed to prevent recidivism and promote rehabilitation of the probationer. The terms must include, but are not limited to, the requirements that a probationer:

(1) commit no offense against the laws of this or any other state or the United States;

(2) avoid injurious or vicious habits;

(3) avoid persons or places of disreputable or harmful character;

(4) report to the probation officer as directed;

(5) permit the probation officer to visit him at his home or elsewhere;

(6) work faithfully at suitable employment as far as possible;

(7) remain within a specified place;

(8) pay his fine, if the court so orders and, if one be assessed, in one or several sums, and make restitution or reparation in any sum that the court shall determine not to exceed One Thousand Dollars ($1,000); and

(9) support his dependents.

(c) The clerk of a court granting probation shall promptly furnish the probationer with a written statement of the period and terms of his probation. If the period or terms are later modified, the clerk of the modifying court shall promptly furnish the probationer with a written statement of the modifications. The clerk in either case shall take a receipt from the probationer for delivery of the statement.

(d) After probation has been granted, jurisdiction of the probationer's case may be transferred to another court which can more conveniently supervise the probation. If the other court accepts the transfer, the transferring court shall forward to it all pertinent records in the case. The court accepting the transfer is vested with jurisdiction of the case and may exercise any power conferred by this Act upon the court initially granting probation.

Revocation of probation

Sec. 6. (a) If a probationer violates any term of his probation, the court may cause his arrest by warrant as in other cases. The probationer upon arrest shall be brought promptly before the court causing his arrest and the court, upon motion of the state and after a hearing without a jury, may continue, modify, or revoke the probation as the evidence warrants.

(b) On the date the probation is revoked, the finding of guilty becomes final and the court shall render judgment thereon against the defendant. The judgment shall be enforced as in other cases and the time served on probation may not be credited or otherwise considered for any purpose.

Discharge from probation

Sec. 7. (a) When the period and terms of a probation have been satisfactorily completed, the court shall, upon its own motion, discharge him from probation and enter an order in the minutes of the court setting aside the finding of guilty and dismissing the accusation or complaint and the information or indictment against the probationer.

(b) After the case against the probationer is dismissed by the court, his finding of guilty may not be considered *for any purpose* except to determine his entitlement to a future probation under this Act, or any other probation Act.

Appellate rights

Sec. 8. (a) A probationer, at the time he is granted probation, may appeal his conviction as in other cases. He may also appeal the revocation of his probation, but the revocation may not be set aside on appeal without a clear showing of abuse of discretion by the revoking court.

(b) The refusal of a court to grant probation is not appealable unless the jury hearing the case has recommended probation in its verdict and the defendant has satisfied the requirements of Section 3(a) (1), (2), (3), and (4) of this Article.

Art. 42.14 [782] [866] [844] In absence of defendant

The judgment and sentence in a misdemeanor case may be rendered in the absence of the defendant.

Art. 42.15 [783] [867] [845] As to fine

When the defendant is only fined the judgment shall be that the State of Texas recover of the defendant the amount of such fine and all costs of the prosecution, and that the defendant, if present, be committed to jail until such fine and costs are paid; or if the defendant be not present, that a capias forthwith issue, commanding the sheriff to arrest the defendant and commit him to jail until such fine and costs are paid; also, that execution may issue against the property of such defendant for the amount of such fine and costs.

Art. 42.16 [784] [868] [846] On other judgment

If the punishment is any other than a fine, the judgment shall specify it, and order it enforced by the proper process. It shall also adjudge the costs against the defendant, and order the collection thereof as in other cases.

CHAPTER FORTY-THREE

EXECUTION OF JUDGMENT

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Article 43.01 [785] [869] [847] Discharging judgment for fine

When the judgment and sentence against a defendant is for fine and costs he shall be discharged from the same,

1. When the amount thereof has been fully paid; or
2. When remitted by the proper authority; or
3. When he has remained in custody for the time required by law to satisfy the amount thereof.

Art. 43.02 [786] [870] [848] Payable in money

All recognizances, bail bonds, and undertakings of any kind, whereby a party becomes bound to pay money to the State, and all fines and forfeitures of a pecuniary character, shall be collected in the lawful money of the United States only.

Art. 43.03 [898] [990] [955] Pay or jail

When a judgment and sentence have been rendered against a defendant for a pecuniary fine, if he is present, he shall be imprisoned in jail until discharged as provided by law. A certified copy of such judgment and sentence shall be sufficient to authorize such imprisonment.

Art. 43.04 [788] [872] [850] If defendant is absent

When a pecuniary fine has been adjudged against a defendant not present, a capias shall forthwith be issued for his arrest. The sheriff shall execute the same by placing the defendant in jail.

Art. 43.05 [789] [873] [851] Capias shall recite what

Where such capias issues, it shall state the rendition and amount of the judgment and sentence and the amount unpaid thereon, and command the sheriff to take the defendant and place him in jail until

the amount due upon such judgment and sentence and the further cost of collecting the same are paid, or until the defendant is otherwise legally discharged.

Art. 43.06 [790] [874] [852] Capias may issue to any county

The capias provided for in this Chapter may be issued to any county in the State, and shall be executed and returned as in other cases, but no bail shall be taken in such cases.

Art. 43.07 [791] [875–6] Execution for fine and costs

In each case of pecuniary fine, an execution may issue for the fine and costs, though a capias was issued for the defendant; and a capias may issue for the defendant though an execution was issued against his property. The execution shall be collected and returned as in civil actions. When the execution has been collected, the defendant shall be at once discharged; and whenever the fine and costs have been legally discharged in any way, the execution shall be returned satisfied.

Art. 43.08 [792] [877] [855] Further enforcement of judgment

When a defendant has been committed to jail in default of the fine and costs adjudged against him, the further enforcement of such judgment and sentence shall be in accordance with the provisions of this Code.

Art. 43.09 [793] [878] [856] Fine discharged

When a defendant is convicted of a misdemeanor and his punishment is assessed at a pecuniary fine, if he is unable to pay the fine and costs adjudged against him, he may for such time as will satisfy the judgment be put to work in the workhouse, or on the county farm, or public improvements of the county, as provided in the succeeding Article; or if there be no such workhouse, farm or improvements, he shall be imprisoned in jail for a sufficient length of time to discharge the full amount of fine and costs adjudged against him; rating such labor or imprisonment at five dollars for each day thereof; provided, however, that the defendant may pay the pecuniary fine assessed against him at any time while he is serving at work in the workhouse, or on the county farm, or on the public improvements of the county, or while he is serving his jail sentence, and in such instances he shall be entitled to a credit of five dollars for each day or fraction of a day that he has served and he shall only be required to pay his balance of the pecuniary fine assessed against him.

Art. 43.10 [794] To do manual labor

Where the punishment assessed in a conviction for misdemeanor is confinement in jail for more than one day, or where in such conviction the punishment is assessed only at a pecuniary fine and the party so convicted is unable to pay the fine and costs adjudged against

him, those so convicted shall be required to do manual labor in accordance with the provisions of this Article under the following rules and regulations:

1. Each commissioners court may provide for the erection of a workhouse and the establishment of a county farm in connection therewith for the purpose of utilizing the labor of said parties so convicted;

2. Such farms and workhouses shall be under the control and management of the commissioners court, and said court may adopt such rules and regulations not inconsistent with the laws as they deem necessary for the successful management and operation of said institutions and for effectively utilizing said labor;

3. Such overseers and guards may be employed under the authority of the commissioners court as may be necessary to prevent escapes and to enforce such labor, and they shall be paid out of the county treasury such compensation as said court may prescribe;

4. Those so convicted shall be so guarded while at work as to prevent escape;

5. They shall be put to labor upon the public roads, bridges or other public works of the county when their labor cannot be utilized in the county workhouse or county farm;

6. They shall be required to labor not less than eight nor more than ten hours each day, Sundays excepted. No person shall ever be required to work for more than one year;

7. One who refuses to labor or is otherwise refractory or insubordinate may be punished by solitary confinement on bread and water or in such other manner as the commissioners court may direct;

8. When not at labor they may be confined in jail or the workhouse, as may be most convenient, or as the regulations of the commissioners court may prescribe;

9. A female shall in no case be required to do manual labor except in the workhouse; and

10. One who from age, disease, or other physical or mental disability is unable to do manual labor shall not be required to work, but shall remain in jail until his term of imprisonment is ended, or until the fine and costs adjudged against him are discharged according to law. His inability to do manual labor may be determined by a physician appointed for that purpose by the county judge or the commissioners court, who shall be paid for such service such compensation as said court may allow.

Art. 43.11 [795] [879] [857] Authority for imprisonment

When, by the judgment and sentence of the court, a defendant is to be imprisoned in jail, a certified copy of such judgment and sentence shall be sufficient authority for the sheriff to place such defendant in jail.

Art. 43.12 [796] [880] [858] Capias for imprisonment

A capias issued for the arrest and commitment of one convicted of a misdemeanor, the penalty of which or any part thereof is im-

prisonment in jail, shall recite the judgment and sentence and command the sheriff to place the defendant in jail, to remain the length of time therein fixed; and this writ shall be sufficient to authorize the sheriff to place such defendant in jail.

Art. 43.13 [797] [881] [859] Discharge of defendant

A defendant who has remained in jail the length of time required by the judgment and sentence shall be discharged. The sheriff shall return the copy of the judgment and sentence, or the capias under which the defendant was imprisoned, to the proper court, stating how it was executed.

Art. 43.14 [798] Execution of convict

Whenever the sentence of death is pronounced against a convict, the sentence shall be executed at any time before the hour of sunrise on the day set for the execution not less than thirty days from the day of sentence, as the court may adjudge, by causing to pass through the body of the convict a current of electricity of sufficient intensity to cause death, and the application and continuance of such current through the body of such convict until he is dead.

Art. 43.15 [799] Warrant of execution

Whenever any person is sentenced to death, the clerk of the court in which the sentence is pronounced, shall within ten days after sentence has been pronounced, issue a warrant under the seal of the court for the execution of the sentence of death, which shall recite the fact of conviction, setting forth specifically the offense, the judgment of the court, the time fixed for his execution, and directed to the Director of the Department of Corrections at Huntsville, Texas, commanding him to proceed, at the time and place named in the sentence, to carry the same into execution, as provided in the preceding Article, and shall deliver such warrant to the sheriff of the county in which such judgment of conviction was had, to be by him delivered to the said Director of the Department of Corrections, together with the condemned person.

Art. 43.16 [800] Taken to Department of Corrections

Immediately upon the receipt of such warrant, the sheriff shall transport such condemned person to the Director of the Department of Corrections and shall deliver him and the warrant aforesaid into the hands of the Director of the Department of Corrections and shall take from the Director of the Department of Corrections his receipt for such person and such warrant, which receipt the sheriff shall return to the office of the clerk of the court where the judgment of death was rendered. For his services, the sheriff shall be entitled to the same compensation as is now allowed by law to sheriffs for removing or conveying prisoners under the provisions of Section 4 of Article 1029 or 1030 of the Code of Criminal Procedure of 1925, as amended.

Art. 43.17 [801] Visitors

Upon the receipt of such condemned person by the Director of the Department of Corrections, he shall be confined therein until the time for his execution arrives, and while so confined, all persons outside of said prison shall be denied access to him, except his physician and lawyer, who shall be admitted to see him when necessary to his health or for the transaction of business, and the relatives, friends and spiritual advisors of the condemned person, who shall be admitted to see and converse with him at all proper times, under such reasonable rules and regulations as may be made by the Board of Directors of the Department of Corrections.

Art. 43.18 [802] Executioner

The Director of the Department of Corrections at Huntsville, or in case of his death, disability or absence, his deputy, shall be the executioner. In the event of the death or disability or absence of both the Director of the Department of Corrections and his deputy, the executioner shall be that person appointed by the Board of Directors of the Department of Corrections for that purpose.

Art. 43.19 [803] Place of execution

The execution shall take place at the Department of Corrections at Huntsville, Texas, in a room arranged for that purpose.

Art. 43.20 [804] Present at execution

The following persons may be present at the execution: the executioner, and such persons as may be necessary to assist him in conducting the execution; the Board of Directors of the Department of Corrections, two physicians, including the prison physician, the spiritual advisor of the condemned, the chaplains of the Department of Corrections, the county judge and sheriff of the county in which the Department of Corrections is situated, and any of the relatives or friends of the condemned person that he may request, not exceeding five in number, shall be admitted. No convict shall be permitted by the prison authorities to witness the execution.

Art. 43.21 [805] Escape after sentence

If the condemned escape after sentence and before his delivery to the Director of the Department of Corrections, and be not rearrested until after the time fixed for execution, any person may arrest and commit him to the jail of the county in which he was sentenced; and thereupon the court by whom the condemned was sentenced; either in term-time or vacation, on notice of such arrest being given by the sheriff, shall again appoint a time for the execution, not less than thirty days from such appointment, which appointment shall be by the clerk of said court immediately certified to the Director of the Department of Corrections and such clerk shall place such certificate in the hands of the sheriff, who shall deliver the same, together with the warrant aforesaid and the condemned person to the

Director of the Department of Corrections, who shall receipt to the sheriff for the same and proceed at the appointed time to carry the sentence of death into execution as hereinabove provided.

Art. 43.22 [806] Escape from Department of Corrections

If the condemned person escapes after his delivery to the Director of the Department of Corrections, and is not retaken before the time appointed for his execution, any person may arrest and commit him to the Director of the Department of Corrections whereupon the Director of the Department of Corrections shall certify the fact of his escape and recapture to the court in which sentence was passed; and the court, either in term-time or vacation, shall again appoint a time for the execution which shall not be less than thirty days from the date of such appointment; and thereupon the clerk of such court shall certify such appointment to the Director of the Department of Corrections, who shall proceed at the time so appointed to execute the condemned, as hereinabove provided. The sheriff or other officer or other person performing any service under this and the preceding Article shall receive the same compensation as is provided for similar services under the provisions of Articles 1029 or 1030 of the Code of Criminal Procedure of 1925, as amended. If for any reason execution is delayed beyond the date set, then the court which originally sentenced the defendant may set a later date for execution.

Art. 43.23 [807] Return of Director

When the execution of sentence is suspended or respited to another date, same shall be noted on the warrant and on the arrival of such date, the Director of the Department of Corrections shall proceed with such execution; and in case of death of any condemned person before the time for his execution arrives, or if he should be pardoned or his sentence commuted by the Governor, no execution shall be had; but in such cases, as well as when the sentence is executed, the Director of the Department of Corrections shall return the warrant and certificate with a statement of any such act and his proceedings endorsed thereon, together with a statement showing what disposition was made of the dead body of the convict, to the clerk of the court in which the sentence was passed, who shall record the warrant and return in the minutes of the court.

Art. 43.24 [808] [888] Treatment of condemned

No torture, or ill treatment, or unnecessary pain, shall be inflicted upon a prisoner to be executed under the sentence of the law.

Art. 43.25 [809] [891] [869] Body of convict

The body of a convict who has been legally executed shall be embalmed immediately and so directed by the Director of the Department of Corrections. If the body is not demanded or requested by a relative or bona fide friend within forty-eight hours after execution then it shall be delivered to the Anatomical Board of the State of Texas, if requested by the Board. If the body is requested by a rela-

tive, bona fide friend, or the Anatomical Board of the State of Texas, such recipient shall pay a fee of not to exceed twenty-five dollars to the mortician for his services in embalming the body for which the mortician shall issue to the recipient a written receipt. When such receipt is delivered to the Director of the Department of Corrections, the body of the deceased shall be delivered to the party named in the receipt or his authorized agent. If the body is not delivered to a relative, bona fide friend, or the Anatomical Board of the State of Texas, the Director of the Department of Corrections shall cause the body to be decently buried, and the fee for embalming shall be paid by the county in which the indictment which resulted in conviction was found.

Art. 43.26 [811] Preventing rescue

The sheriff may, when he supposes there will be a necessity, order such number of citizens of his county, or request any military or militia company, to aid in preventing the rescue of a prisoner.

APPEAL AND WRIT OF ERROR

CHAPTER FORTY-FOUR

APPEAL AND WRIT OF ERROR

Art.

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Article 44.01 [812] [893] [871] State cannot appeal

The State shall have no right of appeal in criminal actions.

Art. 44.02 [813] [894] [872] Defendant may appeal

A defendant in any criminal action has the right of appeal under the rules hereinafter prescribed.

Art. 44.03 [814] [898] [875] Presence in appellate court

The defendant need not be personally present upon the hearing of his cause in the Court of Criminal Appeals, but if not in jail, he may appear in person.

Art. 44.04 [815 through 818] [901–904] [875, 876] Bond pending appeal

(a) Any defendant who is convicted of a misdemeanor, or who is convicted of a felony and whose punishment is assessed at a fine or confinement not to exceed fifteen years or both, shall be entitled to bail under the rules set forth in this Chapter pending disposition of his motion for new trial, if any, and pending disposition of his appeal, if any, and until his conviction becomes final.

(b) If the defendant is on bail when the trial commences, he shall have the same right to remain on bail during the trial of the case and until the return into court of the verdict as he had under the law before the trial commences.

(c) If the defendant is on bail when the trial commences and is convicted of a misdemeanor appealable to any court where a trial de novo may be had and is on bail when the trial commences, he shall remain at large on such bail and such bail shall not be considered as discharged until his conviction becomes final or he files an appeal bond as required by this Code for appeal from such conviction.

(d) If the defendant is on bail when the trial commences and is convicted of a misdemeanor appealable to the Court of Criminal Appeals or of a felony and his punishment is assessed at a fine or confinement not to exceed fifteen years, or both, he shall remain on such bail and the bail shall not be considered discharged until his conviction has become final, either through his failure to obtain a new trial or to perfect or pursue an appeal or through final affirmance by the appellate court on appeal and the filing of a mandate thereof with the clerk of the trial court.

After conviction, either pending determination of any motion for new trial or pending final determination of the appeal, the court in which he was tried may increase or decrease the amount of his bail, as it deems proper, either upon its own motion or the motion of the State or of the defendant, which bail and the sureties thereon shall be approved by such trial court in the event any additional bond is required.

(e) If the defendant is in custody when the trial commences, and his punishment is assessed at a fine or confinement not to exceed fifteen years, or both, he shall be entitled to bail until his conviction

has become final, either through his failure to obtain a new trial or to perfect an appeal or through final affirmance by the appellate court upon appeal and the filing of a mandate thereof with the clerk of the trial court. Upon application by the defendant, and at any time prior to the time such conviction becomes final, the trial court shall set his bail at such amount as such court deems proper, which bail and sureties on which bond shall be approved by the trial court. Such defendant shall be committed to jail unless he enters into such bail. If he be in custody, his motion for new trial or notice of appeal shall have no effect to release him from such custody unless he enters into such bail.

(f) Any such bail may be entered into and given either in the same or any subsequent term of the court, and shall be sufficient if it substantially meets the requirements of Article 17.09.

(g) In no event shall the defendant and the sureties on his bond be released from their liability on such bond or bonds until the defendant is placed in the custody of the sheriff.

(h) If the punishment assessed exceeds fifteen years confinement, the defendant shall be placed in custody of the sheriff and the bail thereby considered discharged immediately upon the return into court of the verdict as to punishment, or if the minimum punishment possible under the law exceeds fifteen years, then immediately upon the return into court of the verdict of guilty.

Art. 44.05 [819] [906] Receipt of mandate

When the clerk of any court from whose judgment an appeal has been taken in cases wherein bail has been allowed shall receive the mandate of the Court of Criminal Appeals affirming such judgment, he shall immediately file the same and forthwith issue a capias for the arrest of the defendant for the execution of the sentence of the court, which shall recite the fact of conviction, setting forth the offense and the judgment and sentence of the court, the appeal from and affirmance of such judgment and the filing of such mandate, and shall command the sheriff to arrest and take into his custody the defendant and place him in jail and therein keep him until delivered to the proper authorities, as directed by said sentence. The sheriff shall forthwith execute such capias as directed.

Art. 44.06 [820] [907] Capias may issue to any county

Such capias may issue to any county of this State, and shall be executed and returned as in other felony cases, except that no bail shall be taken in such cases.

Art. 44.07 [821] [908] Right of appeal not abridged

The right of appeal, as otherwise provided by law, shall in no wise be abridged by any provision of this Chapter.

Art. 44.08 [822, 827] [910, 915] [878] Notice of appeal

(a) It shall be necessary for defendant, as a condition of perfecting an appeal to the Court of Criminal Appeals, to give notice of

appeal. This notice may be given orally in open court or may be in writing filed with the clerk. Such notice shall be sufficient if it shows the desire of defendant to appeal from the conviction to the Court of Criminal Appeals.

(b) In cases where the death penalty has been assessed or in probation cases where imposition of sentence is suspended, such notice shall be given or filed within ten days after overruling of the motion or amended motion for new trial and if there be no motion or amended motion for new trial, then within ten days after entry of judgment on the verdict.

(c) In all other cases such notice shall be given or filed within ten days after sentence is pronounced.

(d) The record on appeal will be deemed sufficient to show notice of appeal was duly given if it contains written notice of appeal showing a date of filing within the time required by law or if the record contains any judgment or sentence or other court order or any docket entry by the court showing that notice of appeal was duly given.

(e) For good cause shown, the trial court may permit the giving of notice of appeal after the expiration of such ten days.

Art. 44.09 [824] [912] [880] Escape pending appeal

If the defendant, pending an appeal in the felony case, makes his escape from custody, the jurisdiction of the Court of Criminal Appeals shall no longer attach in the case. Upon the fact of such escape being made to appear, the court shall, on motion of the State's attorney, dismiss the appeal; but the order dismissing the appeal shall be set aside if it is made to appear that the defendant has voluntarily returned within ten days to the custody of the officer from whom he escaped; and in cases where the punishment inflicted by the jury is death or confinement in an institution operated by the Department of Corrections for life, the court may in its discretion reinstate the appeal if the defendant is recaptured or voluntarily surrenders within thirty days after such escape.

Art. 44.10 [825] [913] [881] Sheriff to report escape

When any such escape occurs, the sheriff who had the prisoner in custody shall immediately report the fact under oath to the district or county attorney of the county in which the conviction was had, who shall forthwith forward such report to the State prosecuting attorney. Such report shall be sufficient evidence of the fact of such escape to authorize the dismissal of the appeal.

Art. 44.11 [828] [916] [884] Effect of appeal

Upon the appellate record being filed in the Court of Criminal Appeals, all further proceedings in the trial court, except as to bond as provided in Article 44.04 and the proceedings in Article 40.09, shall be suspended and arrested until the judgment of the Court of Criminal Appeals is received by the trial court, in cases where the record or any portion thereof is lost or destroyed it may be sub-

stituted in the trial court and when so substituted the record may be prepared and transmitted to the Court of Criminal Appeals as in other cases.

Art. 44.12 [832] [905–919] Procedure as to bail pending appeal

The amount of any bail given in any felony or misdemeanor case to perfect an appeal from any court to the Court of Criminal Appeals shall be fixed by the court in which the judgment and sentence appealed from was rendered. The sufficiency of the security thereon shall be tested, and the same proceedings had in case of forfeiture, as in other cases regarding bail.

Art. 44.13 [833] [921] [889] Appeals from justice and corporation courts

In appeals from the judgments and sentence of justice or corporation courts, the defendant shall, if he be in custody, be committed to jail unless he gives bail, to be approved by the court from whose judgment and sentence the appeal is taken, in an amount not less than double the amount of fine and costs adjudged against him, payable to the State of Texas; provided the bail shall not in any case be for a less sum than fifty dollars. The bond shall recite that in the cause the defendant was convicted and has appealed, and be conditioned that the defendant shall make his personal appearance before the court to which the appeal is taken instanter, if said court be then in session; and if said court be not in session, then at its next regular term, stating the time and place of holding the same, and there remain from day to day and term to term, and answer in said cause in said court.

Art. 44.14 [834] [922] Filing bond perfects appeal

In appeals from justice and corporation courts, when the appeal bond provided for in the preceding Article has been filed with the justice or judge who tried the case, the appeal in such case shall be held to be perfected. No appeal shall be dismissed because defendant failed to give notice of appeal in open court, nor on account of any defect in the transcript.

Art. 44.15 [835] [923] Appellate court may allow new bond

When an appeal is taken from any court of this State, by filing a bond within the time prescribed by law in such cases, and the court to which appeal is taken determines that such bond is defective in form or substance, such appellate court may allow the appellant to amend such bond by filing a new bond, on such terms as the court may prescribe.

Art. 44.16 [836] [924] [890] Appeal bond given within what time

If the defendant is not in custody, a notice of appeal as provided in Article 44.13 shall have no effect whatever until the required ap-

peal bond has been given and approved; and such appeal bond shall, in all cases, be given within ten days after the sentence of the court has been rendered, and not afterward.

Art. 44.17 [837] [925] [891] Trials de novo

In all appeals from justice and corporation courts to the county court, the trial shall be de novo in the trial in the county court, the same as if the prosecution had been originally commenced in that court.

Art. 44.18 [838] [926] [892] Original papers sent up

In appeals from justice and corporation courts, all the original papers in the case, together with the appeal bond, if any, and together, with a certified transcript of all the proceedings had in the case before such court shall be delivered without delay to the clerk of the court to which the appeal was taken, who shall file the same and docket the case.

Art. 44.19 [839] [927] [893] Witnesses not again summoned

In the cases mentioned in the preceding Article, the witnesses who have been summoned or attached to appear in the case before the court below, shall appear before the court to which the appeal is taken without further process. In case of their failure to do so, the same proceedings may be had as if they had been originally summoned or attached to appear before such court.

Art. 44.20 [840] [928] [894] Rules governing appeal bonds

The rules governing the taking and forfeiture of bail shall govern appeal bonds, and the forfeiture and collection of such appeal bonds shall be in the court to which such appeal is taken.

Art. 44.21 [844] [932–933] Clerk to make list of cases

The clerk, immediately after the adjournment of the court at which appeals were taken, shall make out a certificate under his seal showing a list of each cause appealed. This certificate shall show the style of the cause, the offense, the date judgment was rendered, and the date the appeal was taken; and the clerk shall send it to the clerk of the appellate court.

Art. 44.22 [845] [934–935] Failure to receive record

When it appears by the clerk's certificate that an appeal has been taken but that the record has not been received by the clerk of the Court of Criminal Appeals within the time required by law for filing the record, such clerk shall immediately notify the clerk of the proper court that the same has not been received, and such clerk without delay shall prepare and forward another record as in the first instance, and notify the clerk of the appellate court by letter of the fact that such record has been forwarded and how and when it was forwarded.

Art. 44.23 [846] [937, 903] Appeals, when determined

The Court of Criminal Appeals shall hear and determine appeals in criminal actions at the earliest time it may be done, with due regard to the rights of parties and proper administration of justice, and no affirmance of a case shall be determined on mere technicalities or on technical errors in the preparation and filing of the record on appeal.

Art. 44.24 [847] [938] [904] Presumptions on appeal

The Court of Criminal Appeals may affirm the judgment of the court below, or may reverse and remand for a new trial, or may reverse and dismiss the case, or may reform and correct the judgment, as the law and nature of the case may require. The court shall presume that the venue was proved in the court below; that the jury was properly impaneled and sworn; that the defendant was arraigned; that he pleaded to the indictment, that the court's charge was certified by the judge and filed by the clerk before it was read to the jury, unless such matters were made an issue in the court below, or it otherwise affirmatively appears to the contrary from the record. In each case by it decided, the Court of Criminal Appeals shall deliver a written opinion, setting forth in intelligible language the reason for such decision.

Art. 44.25 [848] [939] [905] Cases remanded

The Court of Criminal Appeals may reverse the judgment in a criminal action, as well upon the law as upon the facts. A cause reversed because the verdict is contrary to the evidence shall be remanded for new trial.

Art. 44.26 [849] [940] [906] Duty of the clerk after judgment

When the judgment of the Court of Criminal Appeals is final, the clerk shall make out the proper certificate of the proceedings had and judgment rendered, and mail the same to the clerk of the proper court.

Art. 44.27 [850] [941] [907] Mandate to be filed

When the mandate of the Court of Criminal Appeals is received by the proper clerk, he shall file it with the papers of the cause, and note it upon the docket.

Art. 44.28 [851] [944] [910] When misdemeanor is affirmed

In misdemeanor cases where there has been an affirmance, no proceedings need be had after filing the mandate, except to forfeit the bond of the defendant, or to issue a capias for the defendant, or an execution against his property, to enforce the judgment of the court, as if no appeal had been taken.

Art. 44.29 [852] [945] [911] Effect of reversal

Where the court of Criminal Appeals awards a new trial to the defendant, the cause shall stand as it would have stood in case the new trial had been granted by the court below.

Art. 44.30 [853] [946] [912] Motion in arrest of judgment

Where the motion in arrest of judgment was overruled, and it is decided on appeal that the same ought to have been sustained, the cause shall stand as if the motion had been sustained, unless the appellate court directs the cause to be dismissed.

Art. 44.31 [854] [947] [913] Defendant discharged, when

When the Court of Criminal Appeals reverses a judgment and orders the cause to be dismissed, the defendant, if in custody, must be discharged. The clerk of the appellate court shall at once transmit to the officer having custody of the defendant an order by telegraph or mail.

Art. 44.32 [855] [948] [914] Bail after reversal

When a felony case is reversed and remanded for a new trial, the defendant shall be released from custody, upon his giving bail as in other cases when he is entitled to bail. The clerk of the appellate court shall send the officer having custody of the defendant an order to that effect.

Art. 44.33 [856] [949] [915] Hearing in appellate court

The Court of Criminal Appeals may make rules of procedure as to the hearing of criminal actions upon appeal not inconsistent with this Code. After the record is filed in the Court of Criminal Appeals the parties may file such supplemental briefs as they may desire before the case is heard on oral argument by such court. Each party, upon filing any such supplemental brief, shall promptly cause true copy thereof to be delivered to the opposing party or to the latter's counsel. In every case at least two counsel for the defendant shall be heard in the Court of Criminal Appeals if such be desired by defendant.

Appellant's failure to file his brief in the time prescribed shall not authorize a dismissal of the appeal by the Court of Criminal Appeals, nor shall the Court of Criminal Appeals, for such reason, refuse to consider appellant's case on appeal.

Art. 44.34 [857] [950] [916] Appeal in habeas corpus

When the defendant appeals from the judgment rendered on the hearing of an application under habeas corpus, a record of the proceedings in the cause shall be made out and certified to, together with all the testimony offered, and shall be sent up to the Court of Criminal Appeals for review. This record, when the proceedings take place before the court in session, shall be prepared and certified by the

clerk thereof; but when had before a judge in vacation, the record may be prepared by any person, under direction of the judge, and certified by such judge.

Art. 44.35 [857a] Bail pending habeas corpus appeal

In any habeas corpus proceeding in any court or before any judge in this State where the defendant is remanded to the custody of an officer and an appeal is taken to an appellate court, the defendant shall be allowed bail by the court or judge so remanding the defendant, except in capital cases where the proof is evident. The fact that such defendant is released on bail shall not be grounds for a dismissal of the appeal except in capital cases where the proof is evident.

Art. 44.36 [858] [951, 952, 953] Hearing habeas corpus

Cases of habeas corpus, taken to the Court of Criminal Appeals by appeal, shall be heard at the earliest practicable time. The defendant need not be personally present, and such appeal shall be heard and determined upon the law and the facts arising upon record. No incidental question which may have arisen on the hearing of the application before the court below shall be reviewed. The only design of the appeal is to do substantial justice to the party appealing.

Art. 44.37 [859] [954] [920] Orders on appeal

The Court of Criminal Appeals shall enter such judgment, and make such orders as the law and the nature of the case may require, and may make such orders relative to the costs in the case as may seem right, allowing costs and fixing the amount, or allowing no costs at all.

Art. 44.38 [860] [955] [921] Judgment conclusive

The judgment of the Court of Criminal Appeals in appeals under habeas corpus shall be final and conclusive; and no further application in the same case can be made for the writ, except in cases specially provided for by law.

Art. 44.39 [861] [957] [923] Appellant detained by other than officer

If the appellant in a case of habeas corpus be detained by any person other than an officer, the sheriff receiving the mandate of the Court of Criminal Appeals, shall immediately cause the person so held to be discharged; and the mandate shall be sufficient authority therefor.

Art. 44.40 [862] [958] [924] Judgment to be certified

The judgment of the Court of Criminal Appeals shall be certified by the clerk thereof to the officer holding the defendant in custody, or when he is held by any person other than an officer, to the sheriff of the proper county.

Art. 44.41 [863] [959] [925] Who shall take bail bond

When, by the judgment of the Court of Criminal Appeals upon cases of habeas corpus, the applicant is ordered to give bail, such judgment shall be certified to the officer holding him in custody; and if such officer be the sheriff, the bail bond may be executed before him; if any other officer, he shall take the person detained before some magistrate, who may receive a bail bond, and shall file the same in the proper court of the proper county; and such bond may be forfeited and enforced as provided by law.

Art. 44.42 [864] [960] [926] Appeal on forfeitures

An appeal may be taken by the defendant from every final judgment rendered upon a personal bond, bail bond or bond taken for the prevention or suppression of offenses, where such judgment is for twenty dollars or more, exclusive of costs, but not otherwise.

Art. 44.43 [865] [961] [927] Writ of error

The defendant may also have any such judgment as is mentioned in the preceding Article, and which may have been rendered in courts other than the justice and corporation courts, reviewed upon writ of error.

Art. 44.44 [866] [962] [928] Rules in forfeitures

In the cases provided for in the two preceding Articles, the proceeding shall be regulated by the same rules that govern civil actions where an appeal is taken or a writ of error sued out.

JUSTICE AND CORPORATION COURTS

CHAPTER FORTY-FIVE

JUSTICE AND CORPORATION COURTS

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Article 45.01 [867] Complaint

Proceedings in a corporation court shall be commenced by complaint, which shall begin: "In the name and by authority of the State of Texas"; and shall conclude: "Against the peace and dignity of the State"; and if the offense is only covered by an ordinance, it may also conclude: "Contrary to the said ordinance". The recorder need not charge the jury except upon charges requested in writing by the defendant or his attorney, and he may give or refuse such charges. Complaints before such court may be sworn to before any officer authorized to administer oaths or before the recorder, clerk of the court, city secretary, city attorney or his deputy, each of whom, for that purpose, shall have power to administer oaths.

Art. 45.02 [868] Seal

The said court shall have a seal with a star of five points in the center and the words "Corporation Court in _____ Texas", the impress of which shall be attached to all papers issued out of said court except subpoenas, and shall be used to authenticate the official acts of the clerk and of the recorder.

Art. 45.03 [869] Prosecutions

All prosecutions in a corporation court shall be conducted by the city attorney of such city, town or village, or by his deputy. The county attorney of the county in which said city, town or village is situated may, if he so desires, also represent the State in such prosecutions. In such cases, the said county attorney shall not be entitled to receive any fees or other compensation whatever for said services. The county attorney shall have no power to dismiss any prosecution pending in said court unless for reasons filed and approved by the recorder.

Art. 45.04 [870] Service of process

All process issuing out of a corporation court shall be served by a policeman or marshal of the city, town or village within which it is

situated, under the same rules as are provided by law for the service by sheriffs and constables of process issuing out of the justice court, so far as applicable. Each defendant shall be entitled to at least one days notice of any complaint against him, if such time be demanded.

Art. 45.05 [871] Commitment

When the defendant in such cases is committed to custody, he shall be committed to the custody of the chief of police or city marshal of such city, town or village, to be held by him in accordance with the ordinance providing for the custody of prisoners convicted before such corporation court.

Art. 45.06 [872] Fines and special expenses

The governing body of each incorporated city, town or village shall by ordinance prescribe such rules, not inconsistent with any law of this State, as may be proper to enforce, by execution against the property of the defendant, or imprisonment of the defendant, the collection of all fines imposed by such court, and shall also have power to adopt such rules and regulations concerning the practice and procedure in such court as said governing body may deem proper, not inconsistent with any law of this State. All such fines, and the special expenses described in Article 17.04 dealing with the requisites of a personal bond and a special expense for the issuance and service of a warrant of arrest, after due notice, not to exceed $7.50, shall be paid into the city treasury for the use and benefit of the city, town or village.

Art. 45.07 [873] Collection of costs

No costs shall be provided for by any ordinance of any incorporated city, town, or village, and none shall be collected.

Art. 45.08 [874] Jury fees

The provisions of this Code regulating the amount and collection of jury and witness fees, and for enforcing the attendance of witnesses in criminal cases tried in the justice court shall, so far as applicable, govern such corporation court.

Art. 45.09 [875] Officers' fees

Unless provided by special charter, the governing body of each city, town or village by ordinance shall prescribe the compensation and fees which shall be paid to the recorder, city attorney, city secretary and other officers of said court, to be paid out of the municipal treasury.

Art. 45.10 [876] Appeal

Appeals from a corporation court shall be heard by the county court except in cases where the county court has no jurisdiction, in which counties such appeals shall be heard by the proper court. In

such appeals the trial shall be de novo. Said appeals shall be governed by the rules of practice and procedure for appeals from justice courts to the county court, as far as applicable.

Art. 45.11 [877] Disposition of fees

The fine imposed on appeal and the costs imposed on appeal shall be collected of the defendant, and such fine of the corporation court when collected shall be paid into the municipal treasury.

Art. 45.12 [878] Contempt and bail

The recorder may punish for contempt to the same extent and under the same circumstances as the county judge may punish for contempt of the county court. He shall have power to admit to bail, and to forfeit bonds under such rules as govern such taking and forfeiture in the county court.

Art. 45.13 [879] [969] [934] Criminal docket

Each justice of the peace and each recorder shall keep a docket in which he shall enter the proceedings in each trial had before him, which docket shall show:

1. The style of the action;
2. The nature of the offense charged;
3. The date the warrant was issued and the return made thereon;
4. The time when the examination or trial was had, and if a trial, whether it was by a jury or by himself;
5. The verdict of the jury, if any;
6. The judgment and sentence of the court;
7. Motion for new trial, if any, and the decision thereon;
8. If an appeal was taken; and
9. The time when, and the manner in which, the judgment and sentence was enforced.

Art. 45.14 [880] [970] [935] To file transcript of docket

At each term of the district court, each justice of the peace shall, on the first day of the term of said court for their county, file with the clerk of said court a certified transcript of the docket kept by such justice, of all criminal cases examined or tried before him since the last term of such district court; and such clerk shall immediately deliver such transcript to the foreman of the grand jury.

Art. 45.15 [881] [971] [936] Warrant without complaint

Whenever a criminal offense which a justice of the peace has jurisdiction to try shall be committed within the view of such justice, he may issue his warrant for the arrest of the offender.

Art. 45.16 [882] [972] [937] Complaint shall be written

Upon complaint being made before any justice of the peace, or any other officer authorized by law to administer oaths, that an offense has been committed in the county which a justice of the peace has jurisdiction finally to try, the justice or other officer shall reduce the same to writing and cause the same to be signed and sworn to by the complainant. It shall be duly attested by the officer before whom it was made; and when made before such justice, or when returned to him made before any other officer, the same shall be filed by him.

Art. 45.17 [883] [973] [938] What complaint must state

Such complaint shall state:

1. The name of the accused, if known, and if unknown, shall describe him as accurately as practicable;

2. The offense with which he is charged, in plain and intelligible words;

3. That the offense was committed in the county in which the complaint is made; and

4. It must show, from the date of the offense stated therein, that the offense is not barred by limitation.

Art. 45.18 [884] [974] [939] Warrant shall issue

When the requirements of the preceding Article have been complied with, the justice shall issue a warrant for the arrest of the accused and deliver the same to the proper officer to be executed.

Art. 45.19 [885] [975] [940] Requisites of warrant

Said warrant shall be deemed sufficient if it contains the following requisites:

1. It shall issue in the name of "The State of Texas";

2. It shall be directed to the proper sheriff, constable or some other person specially named therein;

3. It shall command that the body of the accused be taken, and brought before the authority issuing the warrant, at the time and place therein named;

4. It must state the name of the person whose arrest is ordered, if it be known, and if not known, he must be described as in the complaint;

5. It must state that the person is accused of some offense against the laws of the State, naming the offense; and

6. It must be signed by the justice, and his office named in the body of the warrant, or in connection with his signature.

Art. 45.20 [888] [979] [944] Any person may execute warrant

A justice of the peace may, when he deems it necessary, authorize any person other than a peace officer to execute a warrant of ar-

rest by naming such person specially in the warrant. In such case, such person shall have the same powers, and shall be subject to the same rules that govern peace officers in like cases.

Art. 45.21 [889] [980] [945] Offenses committed in another county

Whenever complaint is made before any justice of the peace that a felony has been committed in any other than a county in which the complaint is made, such justice shall issue his warrant for the arrest of the accused, directed as in other cases, commanding that the accused be arrested and taken before any magistrate of the county where such felony is alleged to have been committed, forthwith, for examination as in other cases.

Art. 45.22 [889a] Offenses in counties of 225,000; venue; fee of constable; penalties

Sec. 1. No person shall ever be tried in any justice precinct court unless the offense with which he was charged was committed in such precinct. Provided, however, should there be no duly qualified justice precinct court in the precinct where such offense was committed, then the defendant shall be tried in the justice precinct next adjacent which may have a duly qualified justice court. And provided further, that if the justice of the peace of the precinct in which the offense was committed is disqualified for any reason for trying the case, then such defendant may be tried in some other justice precinct within the county.

Sec. 2. No constable shall be allowed a fee in any misdemeanor case arising in any precinct other than the one for which he has been elected or appointed, except through an order duly entered upon the minutes of the county commissioners court.

Sec. 3. Any justice of the peace, constable or deputy constable violating this Act shall be punished by a fine of not less than $100 nor more than $500.

Sec. 4. The provisions of this Article shall apply only to counties having a population of 225,000 or over according to the last preceding federal census.

Art. 45.23 [890] [981] [946] To try cause without delay

When the defendant is brought before the justice, he shall proceed to try the cause without delay, unless good ground be shown for a postponement thereof, in which case he may postpone the trial to any time not longer than five days, and may, if he deem proper, require the defendant to give bail for his appearance; and if, when required, he fails to give bail, he shall be kept in custody until the final determination of the cause.

Art. 45.24 [891] [982] [947] Defendant may waive jury

The accused may waive a trial by jury; and in such case, the justice shall hear and determine the cause without a jury.

Art. 45.25 [892] [983, 984] Jury summoned

If the accused does not waive a trial by jury, the justice shall issue a writ commanding the proper officer to summon forthwith a venire from which six qualified persons shall be selected to serve as jurors in the case. Said jurors when so summoned shall remain in attendance as jurors in all cases that may come up for hearing until discharged by the court. Any person so summoned who fails to attend may be fined not exceeding $20 for contempt.

Art. 45.26 [893] [985] [950] Complaint read

If the warrant is issued upon a complaint made to the justice, the complaint shall be read to the defendant. If issued by the justice without previous complaint, he shall state to the defendant the accusation against him.

Art. 45.27 [894] [986] [951] Not discharged for informality

A defendant shall not be discharged by reason of any informality in the complaint or warrant. The proceeding before the justice shall be conducted without reference to technical rules except as provided in Article 4.15.

Art. 45.28 [895] [987] [952] Challenge of jurors

In all jury trials in the justice court the State and each defendant in the case shall be entitled to three peremptory challenges, and also to any number of challenges for cause, which cause shall be judged of by the justice.

Art. 45.29 [896] [988] [953] Other jurors summoned

If, from challenges or any other cause, a sufficient number of jurors are not in attendance, the justice shall order the proper officer to summon a sufficient number of qualified persons to form the jury.

Art. 45.30 [897] [989] [954] Oath to jury

The justice shall administer the following oath to the jury: "Each of you do solemnly swear that you will well and truly try the cause about to be submitted to you and a true verdict render therein, according to the law and the evidence, so help you God".

Art. 45.31 [898] [990] [955] Defendant shall plead

After the jury is impaneled, or after the defendant has waived trial by jury, the defendant may plead guilty or not guilty or may enter a plea of nolo contendere, or the special plea named in the succeeding Article.

Art. 45.32 [899] [991] [956] The only special plea

The only special plea allowed is that of former acquittal or conviction for the same offense.

Art. 45.33 [900] [992] [957] Pleading is oral

All pleading of the defendant in justice court may be oral or in writing as the defendant may elect. The justice shall note upon his docket the plea offered.

Art. 45.34 [901] [993] [958] Plea of guilty

Proof as to the offense may be heard upon a plea of guilty and a plea of nolo contendere and the punishment assessed by the court or jury.

Art. 45.35 [902] [994] [959] If defendant refuses to plead

The justice shall enter a plea of not guilty if the defendant refuses to plead.

Art. 45.36 [903] [995] [960] Witnesses examined by whom

The justice shall examine the witnesses if the State is not represented by counsel.

Art. 45.37 [904] [996] [961] May appear by counsel

The defendant has a right to appear by counsel as in all other cases. Not more than one counsel shall conduct either the prosecution or defense. State's counsel may open and conclude the argument.

Art. 45.38 [905] [997] [962] Rules of evidence

The rules of evidence which govern the trials of criminal actions in the district court shall apply to such actions in justice courts.

Art. 45.39 [906] [998] [963] Jury kept together

The jury shall retire in charge of an officer when the cause is submitted to them, and be kept together until they agree to a verdict or are discharged.

Art. 45.40 [907] [999] [964] Mistrial

A jury shall be discharged if it fails to agree to a verdict after being kept together a reasonable time. If there be time left on the same day, another jury may be impaneled to try the cause, or the justice may adjourn for not more than two days and again impanel a jury to try such cause.

Art. 45.41 [908] [1000] [965] Defendant to give bail

In case of adjournment, the justice shall require the defendant to give bail for his appearance. If he fails to give bail he may be held in custody.

Art. 45.42 [909] [1001, 1002] Verdict

When the jury has agreed upon a verdict, it shall bring the same into court; and the justice shall see that it is in proper form and shall enter it upon his docket and render the proper judgment and sentence thereon.

Art. 45.43 [910] [1003] [968] Defendant placed in jail

Whenever, by the provisions of this title, the peace officer is authorized to retain a defendant in custody, he may place him in jail or any other place where he can be safely kept.

Art. 45.44 [911] [1004] [969] New trial granted

A justice may, for good cause shown, grant the defendant a new trial, whenever he considers that justice has not been done the defendant in the trial of such case.

Art. 45.45 [912] [1005] [970] Motion for new trial

An application for a new trial must be made within one day after the rendition of judgment and sentence, and not afterward; and the execution of the judgment and sentence shall not be stayed until a new trial has been granted.

Art. 45.46 [913] [1006–1007] Only one new trial granted

Not more than one new trial shall be granted the defendant in the same case. When a new trial has been granted, the justice shall proceed, as soon as practicable, to try the case again.

Art. 45.47 [914] [1008] [973] State not entitled to new trial

In no case shall the State be entitled to a new trial.

Art. 45.48 [915] [1010] [975] Effect of appeal

When a defendant files the appeal bond required by law with the justice, all further proceeding in the case in the justice court shall cease.

Art. 45.49 [916] [1011] [976] Judgments in open court

All judgments and sentences and final orders of the justice shall be rendered in open court and entered upon his docket.

Art. 45.50 [917] [1012] [977] The judgment

The judgment and sentence, in case of conviction in a criminal action before a justice of the peace, shall be that the State of Texas recover of the defendant the fine and costs, and that the defendant remain in custody of the sheriff until the fine and costs are paid; and that the execution issue to collect the same.

Art. 45.51 [918] [1013] [978] Capias

If the defendant be not in custody when judgment is rendered, or if he escapes from custody thereafter, a capias shall issue for his arrest and confinement in jail until he is legally discharged.

Art. 45.52 [919] [1014] [979] Execution

In each case of conviction before a justice from which no appeal is taken, an execution shall issue for the collection of the fine and costs, which shall be enforced and returned in the manner prescribed by law in civil actions before justices.

Art. 45.53 [920] [1015] [980] Discharged from jail

A defendant placed in jail on account of failure to pay the fine and costs can be discharged on habeas corpus by showing:

1. That he is too poor to pay the fine and costs; and

2. That he has remained in jail a sufficient length of time to satisfy the fine and costs, at the rate of $5 for each day.

But the defendant shall, in no case under this Article, be discharged until he has been imprisoned at least five days; and a justice of the peace may discharge the defendant upon his showing the same cause, by application to such justice; and when such application is granted, the justice shall note the same on his docket.

MISCELLANEOUS PROCEEDINGS

CHAPTER FORTY-SIX

INSANITY AS DEFENSE

Art.
46.01 Mental illness after conviction.
46.02 Insanity in defense or in bar.

Article 46.01 [932-1] Mental illness after conviction

Persons not charged with a criminal offense

Sec. 1. A person who has been convicted of a criminal offense and sentenced to a term in an institution operated by the Department of Corrections or the county jail and whose sentence has been probated, or suspended, or served or who is on parole, is not by reason of that offense a person charged with a criminal offense as that phrase is used in Article 1, Sections 15 and 15a of the Constitution of the State of Texas, and such a person who is mentally ill may be hospitalized under the same procedures provided for other persons who are mentally ill.

Transfer from Department of Corrections to Mental Hospital

Sec. 2. (a) The Director of the Department of Corrections may transfer a prisoner not under death sentence who is confined in an institution operated by the Department of Corrections to a State mental hospital if a prison physician is of the opinion that the prisoner is mentally ill and would benefit from treatment in a mental hospital and if he is advised by the head of a State mental hospital that facilities are available for treatment of the prisoner.

(b) A prisoner so transferred remains under the jurisdiction of the Department of Corrections.

(c) The Director of the Department of Corrections shall transport the prisoner to and from the State mental hospital.

Transfer from county jail to mental hospital

Sec. 3. (a) The county judge may transfer a prisoner who is serving sentence in a county jail to a State mental hospital if the county health officer certifies that the prisoner is mentally ill and would benefit from treatment in a mental hospital and if the judge is advised by the head of a State mental hospital that facilities are available for treatment of the prisoner.

(b) A prisoner so transferred remains under the jurisdiction of the sheriff of the county.

(c) The county from which a prisoner is so transferred shall transport the prisoner to and from the State mental hospital, and shall pay the costs of his support, treatment and maintenance while in the State mental hospital as a prisoner.

Confinement in mental hospital

Sec. 4. The head of the State mental hospital in which a prisoner is being treated shall take reasonable precaution to prevent the escape of the prisoner and shall not discharge or furlough the prisoner or transfer him to any mental hospital other than a State mental hospital during the term of his sentence.

Escape from mental hospital

Sec. 5. The Director of the Department of Corrections or the sheriff from whose custody the prisoner was transferred is responsible for regaining custody of a prisoner who escapes from a State mental hospital.

Recovery before expiration of sentence

Sec. 6. When the head of the State mental hospital determines that a prisoner whose sentence has not expired no longer requires hospitalization for mental illness or will not benefit from continued hospitalization, he shall so notify the Director of the Department of Corrections or the county judge who transferred the prisoner to the State mental hospital. Upon receiving this notice the Director of the Department of Corrections or the county judge shall immediately transport the prisoner from the State mental hospital to the Department of Corrections or county jail to serve the unexpired portion of his sentence.

Examination prior to expiration of sentence

Sec. 7. Prior to the date of the expiration of the sentence of a prisoner who is being treated in a State mental hospital, the head of the mental hospital shall have the prisoner examined and shall determine whether he requires further hospitalization as a mentally ill person and whether because of his mental illness he is likely to cause injury to himself or others if not restrained.

(a) The head of the mental hospital shall release the prisoner upon receiving notice of his discharge from the Department of Corrections or from jail, unless he determines that the prisoner requires further hospitalization as a mentally ill person and because of his mental illness is likely to cause injury to himself or others if not restrained.

(b) If the head of the hospital determines that the prisoner requires further hospitalization as a mentally ill person and because of his mental illness is likely to cause injury to himself or others if not restrained, he shall cause to be filed in the county court of the county in which the hospital is located a Certificate of Examination for Mental Illness and an Application for Temporary Hospitalization or Petition for Indefinite Commitment and may detain the person as a patient after his discharge from prison pending order of the court.

(c) If the head of the hospital determines that the prisoner requires further hospitalization as a mentally ill person, he shall so inform a responsible relative of the patient, and may cause an Application for Temporary Hospitalization or Petition for Indefinite Commitment to be filed in the county court of the proper county.

Time credited

Sec. 8. The time a prisoner is confined in a State mental hospital for treatment shall be considered time served and shall be credited to the term of his sentence, but he shall not be entitled to any commutation of sentence for good conduct while he is under treatment in a mental hospital.

Discharge from prison

Sec. 9. Upon the expiration of the sentence of a prisoner who is being treated in a State mental hospital, he shall receive a discharge from the Department of Corrections or the county jail as in all other cases.

Art. 46.02 [932b] Insanity in defense or in bar

No prior trial except by agreement

Sec. 1. No issue of insanity shall be tried in advance of trial on the merits, except upon written application on behalf of the accused with the consent of the State's attorney and the approval of the trial judge.

Procedure at trial

Sec. 2. (a) At the trial on the merits, the trial court shall hear evidence on the issue of present insanity only if prior to the offer thereof there be filed on behalf of the defendant a written motion asking the court to hear evidence on such issue and requesting the court to declare a mistrial because of such insanity in the manner and to the extent provided for in this Article.

(b) When the issue of present insanity is tried, the following rules shall apply:

(1) The issue of present insanity shall be submitted to the jury only if supported by competent testimony.

(2) (a) Instructions submitting the issue of present insanity shall be framed so as to require the jury to state in its verdict whether defendant is sane or insane at the time of the trial.

(b) Instructions submitting the issue of present insanity shall also require the jury, if it finds the defendant presently insane, to state whether the defendant requires hospitalization in a mental hospital for his own welfare and protection or the protection of others.

(3) The charge shall instruct the jury that if it finds defendant is presently insane it will not consider or deliberate upon any other issues except (a) whether the defendant should be committed to a mental hospital; and (b) whether he was sane or insane as of the time of the alleged offense, if such issue be submitted.

(c) When the issue of insanity as of the time of the alleged offense is tried, the following rules shall apply:

(1) The issue of insanity as of the time of the alleged offense shall be submitted to the jury only if supported by competent evidence tending to show that defendant was insane as of the time of the alleged offense.

(2) Instructions submitting the issue of insanity as of the time of the alleged offense shall be framed so as to require the jury to state in its verdict whether defendant was sane or insane as of the time of the alleged offense.

(3) If the jury finds the defendant to have been insane at the time the offense is alleged to have been committed, the defendant shall stand acquitted of the alleged offense.

(d) The following rules shall apply upon defendant's being acquitted by reason of the jury's returning a finding that he was insane as of the time of the alleged offense:

(1) If the jury finds the defendant to be insane at the time of trial, and it further finds that the defendant should be committed to a mental institution, the court shall enter an order committing the defendant to a State mental hospital and placing him in the custody of the sheriff for transportation to a State mental hospital to be confined therein until he becomes sane. The court shall further order that a transcript of all medical testimony adduced before the jury, shall be forthwith prepared by the court reporter and such transcript shall accompany the patient to the State mental hospital.

(2) If the jury returns a finding that defendant is sane as of the time of the trial, then the defendant shall be finally discharged.

(3) If there be no jury finding on the issue of present insanity, then the court, if the discharge or going at large of defendant be considered by the court manifestly dangerous to the peace and safety of the people, shall order defendant committed to jail or other suitable place pending the prompt initiation and prosecution by the attorney for the State or other person designated by the court of appropriate civil proceedings to determine whether defendant shall be committed to a mental institution, or the court may give defendant into the care of his friends on their giving satisfactory security for his proper care and protection; otherwise, defendant shall be discharged.

(e) Where the jury finds that the defendant is presently insane, but does not find that he was insane at the time of the offense (either because such issue was not submitted or because the jury failed to find on that issue or because it found that he was not insane at such time), the court shall enter a mistrial as to all issues except the issue of present insanity. If the jury finds that the defendant should be committed to a mental institution, the proper order so committing him shall be entered by the court.

Status of patient acquitted

Sec. 3. A person committed to a State mental hospital under this Article upon a jury finding of insanity at the time of trial who has been acquitted of the alleged offense is not by reason of that offense a person charged with a criminal offense. In the event the head of the mental hospital to which he is committed is of the opinion that the person is sane, he shall so notify the court which committed the person to the State mental hospital. Upon receiving such notice, the judge of the committing court shall impanel a jury to determine whether the person is sane or insane. If the jury finds the person is sane, he shall be released. If the jury finds the person is insane,

the court shall order his return to the State mental hospital until he is so adjudged to be sane at a subsequent jury trial in such committing county.

Insanity as bar to proceedings

Sec. 4. If the question of the sanity of the defendant is raised after his conviction and prior to the pronouncement of sentence in a felony case or while an appeal from that conviction is pending, and sufficient proof is shown to satisfy the judge of the convicting court that a reasonable doubt exists as to the sanity of the defendant, the judge shall impanel a jury to determine whether the defendant is sane or insane. If the jury finds the defendant is insane, the court shall enter an order committing the defendant to a State mental hospital and placing him in the custody of the sheriff for transportation to a State mental hospital to be confined therein as a person charged with a criminal offense until he becomes sane. If the jury finds the defendant is sane, the proceedings in the case against him shall continue.

Insanity as bar to execution of death sentence

Sec. 5. If the question of the sanity of a person under death sentence is raised and sufficient proof is shown to satisfy the judge of the convicting court or the judge of the district court of the county in which the person is confined that reasonable doubt exists as to his sanity, the judge shall impanel a jury to determine whether the person is sane or insane. If the jury finds the person is insane, the court shall enter an order committing him to a State mental hospital to be confined therein as a person charged with a criminal offense until he becomes sane. If the jury finds the person is sane, the court shall remand him to the proper authority for disposition according to law.

Suspension of proceedings

Sec. 6. When a defendant is found to be insane and committed to a State mental hospital under this Chapter, all further proceedings in the case against him shall be suspended until he becomes sane, except that upon motion of a defendant's counsel an appeal from a conviction may be prosecuted.

Trial on recovery of sanity

Sec. 7. (a) If the head of a State mental hospital in which a person charged with a criminal offense is confined under this Chapter is of the opinion that the person is sane, he shall so notify the court which committed the person to the State mental hospital.

(b) Upon receiving this notice, the judge of the committing court shall impanel a jury to determine whether the person is sane or insane. If the jury finds the person sane, the proceedings in the case against him shall continue. If the jury finds the person is insane, the court shall order his return to the State mental hospital until he becomes sane.

Trial on issue of insanity

Sec. 8. In a trial under this Chapter, the counsel for the defense has the right to open and conclude the argument on the issue of

insanity. If the defendant has no counsel, the court shall appoint counsel to conduct the trial for him.

Medical testimony required

Sec. 9. No person shall be committed to a mental hospital under this Chapter except on competent medical or psychiatric testimony.

Time credited

Sec. 10. The time a person charged with or convicted of a criminal offense is confined in a State mental hospital under this Chapter pending trial, sentencing or appeal may in the discretion of the court be credited to the term of his sentence upon subsequent sentencing or re-sentencing.

CHAPTER FORTY-SEVEN

DISPOSITION OF STOLEN PROPERTY

Art.
47.01 Subject to order of court.
47.02 Restored on trial.
47.03 Schedule.
47.04 Restored to owner.
47.05 Bond required.
47.06 Property sold.
47.07 Owner may recover.
47.08 Written instrument.
47.09 Claimant to pay charges.
47.10 Charges of officer.
47.11 Scope of Chapter.

Article 47.01 [933] [1031] [996] Subject to order of court

An officer who comes into custody of property alleged to have been stolen must hold it subject to the order of the proper court or magistrate.

Art. 47.02 [934] [1032] [997] Restored on trial

Upon the trial of any criminal action for theft, or for any other illegal acquisition of property which is by law a penal offense, the court trying the case shall order the property to be restored to the person appearing by the proof to be the owner of the same.

Likewise, the judge of any court in which the trial of any criminal action for theft or any other illegal acquisition of property which is by law a penal offense is pending may, upon hearing, if it is proved to the satisfaction of the judge of said court that any person is a true owner of the property alleged to have been stolen, and which is in possession of a peace officer, by written order, direct the property to be restored to such owner.

Art. 47.03 [935] [1033] [998] Schedule

When an officer seizes property alleged to have been stolen, he shall immediately file a schedule of the same, and its value, with the magistrate or court having jurisdiction of the case, certifying that the property has been seized by him, and the reason therefor.

Art. 47.04 [936] [1034] [999] Restored to owner

Upon an examining trial, if it is proven to the satisfaction of the magistrate that any person is the true owner of property alleged to have been stolen, and which is in possession of a peace officer, he may upon motion by the state, by written order direct the property to be restored to such owner subject to the conditions that such property shall be made available to the state or by order of any court having jurisdiction over the offense to be used for evidentiary purposes.

Art. 47.05 [937] [1035–6] Bond required

If the magistrate has any doubt as to the ownership of the property, he may require a bond of the claimant for its re-delivery in case it should thereafter be shown not to belong to such claimant; or he may, in his discretion, direct the property to be retained by the sheriff until further orders as to its possession. Such bond shall be in a sum equal to the value of the property, with sufficient security, payable to and approved by the county judge of the county in which the property is in custody. Such bond shall be filed in the office of the county clerk of such county, and in case of a breach thereof may be sued upon in such county by any claimant of the property; or by the county treasurer of such county.

Art. 47.06 [938] [1037–8] Property sold

If the property is not claimed within 30 days from the conviction of the person accused of illegally acquiring it, the same procedure for its disposition as set out in Article 18.30 of this Code shall be followed.

Art. 47.07 [939] [1039] [1004] Owner may recover

The real owner of the property sold under the provisions of Article 47.06 may recover such property under the same terms as prescribed in Section 4 of Article 18.30 of this Code.

Art. 47.08 [940] [1040–1] Written instrument

If the property is a written instrument, it shall be deposited with the county clerk of the county where the proceedings are had, subject to the claim of any person who may establish his right thereto. The claimant of any such written instrument shall file his written sworn claim thereto with the county judge. If such judge be satisfied that such claimant is the real owner of the written instrument, the same shall be delivered to him. The county judge may, in his discretion, require a bond of such claimant, as in other cases

of property claimed under any provision of this Chapter, and may also before such delivery require the written instrument to be recorded in the minutes of his court.

Art. 47.09 [941] [1042] [1007] Claimant to pay charges

The claimant of the property, before he shall be entitled to have the same delivered to him, shall pay all reasonable charges for the safekeeping of the same while in the custody of the law, which charges shall be verified by the affidavit of the officer claiming the same, and determined by the magistrate of a court having jurisdiction thereof. If said charges are not paid, the property shall be sold as under execution; and the proceeds of sale, after the payment of said charges and costs of sale, paid to the owner of such property.

Art. 47.10 [942] [1043] [1008] Charges of officer

When property is sold, and the proceeds of sale are ready to be paid into the county treasury, the amount of expenses for keeping the same and the costs of sale shall be determined by the county judge. The account thereof shall be in writing and verified by the officer claiming the same, with the approval of the county judge thereto for the amount allowed and shall be filed in the office of the county treasurer at the time of paying into his hands the balance of the proceeds of such sale.

Art. 47.11 [943] [1044] [1009] Scope of Chapter

Each provision of this Chapter relating to stolen property applies as well to property acquired in any manner which makes the acquisition a penal offense.

CHAPTER FORTY-EIGHT

PARDON AND PAROLE

Art.
48.01 Governor may pardon.
48.02 Shall file reasons.
48.03 Governor's acts under seal.
48.04 Power to remit fines and forfeitures.
48.05 Reduction of time.

Article 48.01 [952] [1051] [1016] Governor may pardon

In all criminal cases, except treason and impeachment, the Governor shall have power, after conviction, on the written signed recommendation and advice of the Board of Pardons and Paroles, or a majority thereof, to grant reprieves and commutations of punishments and pardons; and upon the written recommendation and advice of a majority of the Board of Pardons and Paroles, he shall have the power to remit fines and forfeitures. The Governor shall have the power to grant one reprieve in any capital case for a period

not to exceed 30 days; and he shall have power to revoke paroles and conditional pardons. With the advice and consent of the Legislature, the Governor may grant reprieves, commutations of punishment and pardons in cases of treason.

Art. 48.02 [957] [1053] [1018] Shall file reasons

When the Governor remits fines or forfeitures, or grants reprieves, commutation of punishment or pardons, he shall file in the office of Secretary of State his reasons therefor.

Art. 48.03 [958] [1057] [1022] Governor's acts under seal

All remissions of fines and forfeitures, and all reprieves, commutations of punishment and pardons, shall be signed by the Governor, and certified by the Secretary of State, under the great seal of State, and shall be forthwith obeyed by any officer to whom the same may be presented.

Art. 48.04 [954] [1052] [1017] Power to remit fines and forfeitures

The Governor shall have the power to remit forfeitures of bail bonds.

Art. 48.05 [967] Reduction of time

If a prisoner sentenced to an institution operated by the Department of Corrections is not paroled under the provisions of this title, or if he is only sentenced to serve the minimum term of imprisonment fixed by law, then the general rule shall apply to his sentence, and he is entitled to such reduction of time as provided by law.

CHAPTER FORTY-NINE

INQUESTS UPON DEAD BODIES

Art.
49.01 When held.
49.02 Body disinterred or cremated.
49.03 Autopsies and tests.
49.04 Liability of physician performing autopsy where order invalid.
49.05 Consent to autopsy.
49.06 Chemical analysis.
49.07 Upon what justice may act.
49.08 Death in jail.
49.09 Subpoenas.
49.10 Testimony.
49.11 Private inquest.
49.12 Hindering proceedings.
49.13 Inquest record.

Art.
49.14 In homicide class.
49.15 Warrant of arrest.
49.16 If slayer arrested.
49.17 Bail.
49.18 Warrant of arrest.
49.19 Requisites of warrant.
49.20 Officers shall execute warrant.
49.21 Arrest pending inquest.
49.22 To certify proceedings.
49.23 Evidence.
49.24 Witnesses to give bail.
49.25 Medical examiners; counties of 120,000 or more.

Article 49.01 [968] When held

It is the duty of the justice of the peace to hold inquests, with or without a jury, within his county in the following cases:

1. When a person dies in prison or in jail;

2. When any person is killed, or from any cause dies an unnatural death, except under sentence of the law; or dies in the absence of one or more good witnesses;

3. When the body of a human being is found, and the circumstances of his death are unknown;

4. When the circumstances of the death of any person are such as to lead to suspicion that he came to his death by unlawful means;

5. When any person commits suicide, or the circumstances of his death are such as to lead to suspicion that he committed suicide;

6. When a person dies without having been attended by a duly licensed and practicing physician, and the local health officer or registrar required to report the cause of death under Rule 41a, Sanitary Code of Texas, Article 4477, Revised Civil Statutes, General Laws, 46th Legislature, 1939, page 343, does not know the cause of death. When the local health officer or registrar of vital statistics whose duty it is to certify the cause of death does not know the cause of death, he shall so notify the justice of the peace of the precinct in which the death occurred and request an inquest;

7. When a person dies who has been attended by a duly licensed and practicing physician or physicians, and such physician or physicians are not certain as to the cause of death and are unable to certify with certainty the cause of death as required by Rule 40a, Sanitary Code of Texas, Article 4477, Revised Civil Statutes, Chapter 41, Acts, First Called Session, 40th Legislature, 1927, page 116. In case of such uncertainty the attending physician or physicians, or the superintendent or general manager of the hospital or institution in which the deceased shall have died, shall so report to the justice of the peace of the precinct in which the death occurred, and request an inquest.

The inquests authorized and required by this Article shall be held by the justice of the peace of the precinct in which the death occurred, but in event the justice of the peace of such precinct is

unavailable, or shall fail or refuse to act, then such inquest shall be conducted by the nearest available justice of the peace in which the death occurred.

Art. 49.02 [969] [1059] [1024] Body disinterred or cremated

Sec. 1. When a body upon which an inquest ought to have been held has been interred, the justice may cause it to be disinterred for the purpose of holding such inquest.

Sec. 2. Before any body, upon which an inquest is authorized by the provisions of Article 49.01 can lawfully be cremated, an autopsy shall be performed thereon as provided in this Article, or a certificate that no autopsy was necessary shall be furnished by the justice of the peace. Before any dead body can be lawfully cremated, the owner or operator of the crematory shall demand and be furnished with a certificate, signed by the justice of the peace of the justice precinct in which the death occurred showing that an autopsy was performed on said body or that no autopsy thereon was necessary. No autopsy shall be required by the justice of the peace as a prerequisite to cremation in case death was caused by the pestilential diseases of Asiatic cholera, bubonic plague, typhus fever, or smallpox, named in Rule 77, Sanitary Code of Texas, Article 4477, Revised Civil Statutes of Texas, 1925. All certificates furnished the owner or operator of a crematory by any justice of the peace, under the terms of this Article, shall be preserved by such owner or operator of such crematory for a period of two years from the date of the cremation of said body.

Sec. 3. Any person violating any provision of this Article insofar as it relates to the cremation of bodies, shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than $500 and not more than $1,000, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

Art. 49.03 [970] [1060] Autopsies and Tests

The justice of the peace may in all cases call in the County Health Officer, or if there be none or if his services are not then obtainable, then a duly licensed and practicing physician, and shall procure their opinions and their advice on whether or not to order an autopsy to determine the cause of death. If upon his own determination he deems an autopsy necessary, the justice of the peace shall, by proper order, request the County Health Officer, or if there be none or if it be impracticable to secure his service, then some duly licensed and practicing physician who is trained in pathology to make an autopsy in order to determine the cause of death, and whether death was from natural causes or resulting from violence, and the nature and character of either of them. The county in which such autopsy and inquest is held shall pay the physician making such autopsy a fee of not more than $100, the amount to be determined by the Commissioners Court after ascertaining the amount and nature of the work performed in making such autopsy. In those cases where a complete autopsy is deemed unnecessary by the justice of the peace to ascertain the cause of death, he may by proper order, order the taking of blood samples or any other samples of fluids, body tissues or organs in order

to ascertain the cause of death or whether any crime has been committed. In the case of a body of a human being whose identity is unknown, the justice of the peace may, by proper order, authorize such investigative and laboratory tests and processes as are required to determine the identity as well as the cause of death.

Art. 49.04 [970a] Liability of physician performing autopsy where order invalid

A physician authorized to practice medicine in this State who performs an autopsy upon an order of a justice of the peace, or a person who makes a test on a body upon an order of a justice of the peace, who does so in the good faith belief that the order is a valid one, shall not be held liable for damages in the event it is determined that the order was for any reason invalid.

Art. 49.05 [970b] Consent to autopsy

Sec. 1. Consent for a licensed physician to conduct an autopsy of the body of a deceased person shall be deemed sufficient when given by the following: In the case of a married person, the surviving spouse, or if no spouse survive him, by any child of such marriage, or in the event of a minor child of such marriage, the guardian of such child if any there be, or in the absence of such guardian, the court having jurisdiction of the person of such minor; in the event that neither spouse nor child survives such deceased, then permission for an autopsy shall be valid when given by a person who would be allowed to give such permission in the case of an unmarried deceased.

If the deceased be unmarried, then permission shall be given by the following for such autopsy, in the order stated: father, mother, guardian, or next of kin, and in the absence of any of the foregoing, by any natural person assuming custody of and responsibility for burial of the body of such deceased. If two or more of the above-named persons assume custody of the body, consent of one of them shall be deemed sufficient.

Sec. 2. For purposes of this Article, "licensed physician" shall be defined as any person duly licensed by the Texas State Board of Medical Examiners, and whose license is current in all respects.

Art. 49.06 [971] [1061] [1024] Chemical analysis

If upon such inquest, it becomes necessary to determine whether the death has been produced by poison, the justice of the peace, upon his own determination, or upon request of the physician performing such autopsy, shall call in to his aid, if necessary, some medical expert, chemist, toxicologist or licensed physician practicing pathology, qualified to make an analysis of the stomach and its contents, together with such other portions of the body as may be necessary to be analyzed and tested, for the purpose of determining the presence of poison in such body. The commissioners court shall pay to such expert or specialist such fee as it may determine reasonable not to exceed $100.

Art. 49.07 [972] [1062] [1025] Upon what justice may act

The justice shall act in such cases upon information given him by any credible person or upon facts within his knowledge.

Art. 49.08 [973] [1063] [1026] Death in jail

The sheriff and every keeper of any prison shall inform such justice of the death of any person confined therein.

Art. 49.09 [974] 1064] [1027] Subpoenas

The justice may issue subpoenas to enforce the attendance of witnesses upon an inquest and may issue attachments for those subpoenaed who fail to attend.

Art. 49.10 [975] [1065] [1028] Testimony

Witnesses shall be sworn and examined by the justice and their testimony reduced to writing by or under his direction, and subscribed by them.

Art. 49.11 [976] [1066] [1029] Private inquest

Should the justice deem proper, the inquest may be held in private; but in all cases where a person has been arrested, charged with having caused the death of the deceased, such person and his counsel shall have the right to be present at the inquest, and to examine witnesses and introduce evidence.

Art. 49.12 [977] [1067] [1030] Hindering proceedings

If any other person than the justice, the accused and his counsel, and the counsel for the State, are present at the inquest, they shall not interfere with the proceedings. No questions shall be asked a witness, except by the justice, the accused or his counsel, and the counsel for the State. The justice of the peace may fine any person violating this Article for contempt of court, not exceeding $20, and may cause such person to be placed in the custody of a peace officer and removed from the presence of the inquest.

Art. 49.13 [978] [1068] [1031] Inquest record

The justice shall keep full and complete records properly indexed, of all the proceedings relating to every inquest held by him. The record shall include:

1. The name of the deceased, if known, or if not, as accurate a description of him as can be given;
2. The time, date and place where the body was found, and the time, date and place where the inquest was held;
3. The testimony taken by the justice, and by whom;
4. The full report and detailed findings of the autopsy, if any;
5. The findings by the justice at the inquest;

6. Whether any person was arrested as a suspect before the inquest, and the person's identity, as well as everything material relating to the arrest.

Art. 49.14 [979] [1069] [1032] In homicide cases

When the justice has knowledge that the killing was the act of any person, or when an affidavit is made that such person has killed the deceased, a warrant may issue for the arrest of the accused before inquest held; and the accused and his counsel shall have the right to be present when the same is held, and to examine the witnesses and introduce evidence before the jury.

Art. 49.15 [980] [1070] [1033] Warrant of arrest

Any peace officer to whose hands the justice's warrant of arrest shall come is bound to execute the same without delay, and he shall detain the person arrested until his discharge is ordered by the justice or other proper authority.

Art. 49.16 [981] [1072] [1035] If slayer arrested

If it be found by the justice, upon evidence adduced at the inquest, that a person already arrested did in fact kill the deceased, or was an accomplice or accessory to the death, the justice may, according to the facts of the case, commit him to jail or require him to execute a bail bond with security for his appearance before the proper court to answer for the offense.

Art. 49.17 [982] [1073] [1036] Bail

Bail bond taken before a justice shall be sufficient if it state the grade of offense of which the party is accused, be payable to the State of Texas, be dated and signed by the principal and his surety, if any. Bail may be forfeited, and judgment recovered thereon, and the same collected as in the case of any other bail.

Art. 49.18 [983] [1074] [1037] Warrant of arrest

When by the evidence adduced before a justice holding an inquest, it is found that any person not in custody killed the deceased, or was an accomplice or accessory to the death, the justice shall forthwith issue his warrant of arrest to the sheriff or other peace officer, commanding him to arrest the person accused, and bring him before such justice, or before some other magistrate named in the writ.

Art. 49.19 [984] [1071–1075] Requisites of warrant

A warrant of arrest shall be sufficient if it run in the name of "The State of Texas," give the name of the accused, or describe him when his name is unknown, recite the offense with which he is charged in plain language, and be dated and signed officially by the justice.

Art. 49.20 [985] [1076] [1039] Officer shall execute warrant

The peace officer into whose hands such warrant may come shall forthwith execute the same by arresting the accused and taking him before the magistrate named in the warrant; and the same proceedings shall be had thereon as in other cases where persons accused of offenses are brought before him.

Art. 49.21 [986] [1077] [1040] Arrest pending inquest

Nothing contained in this title shall prevent proceedings being had for the arrest and examination of an accused before a magistrate, pending the inquest. When a person accused of an offense has been already arrested under a warrant from the justice, he shall not be taken from the hands of the peace officer by a warrant from any other magistrate.

Art. 49.22 [987] [1078] [1041] To certify proceedings

The justice holding an inquest shall certify to the proceedings, and shall enclose in an envelope the testimony taken, the finding of the justice, the bail, if any, and all other papers connected with the inquest, shall seal up such envelope and without delay deliver it properly endorsed to the clerk of the district court, who shall safely keep the same in his office subject to the order of the court.

Art. 49.23 [988] [1079] [1042] Evidence

The justice shall preserve all evidence that may come to his knowledge and possessions which might in his opinion tend to show the real cause of death or the person who caused such death, and deliver all such evidence to the district clerk, who shall keep the same safely, subject to the order of the court.

Art. 49.24 [989] [1080] [1043] Witnesses to give bail

The justice, if he deems it proper, may require bail of witnesses examined before the inquest to appear and testify before the next grand jury, or before an examining or other proper court, as in other cases.

Art. 49.25 [989a] Medical examiners; counties of 120,000 or more

Office authorized

Sec. 1. Subject to the provisions of this Act, the Commissioners Court of any county having a population of more than 500,000 and not having a reputable medical school as defined in Articles 4501 and 4503, Revised Civil Statutes of Texas, shall establish and maintain the office of medical examiner, and in all counties having a population of not less than 120,000, the Commissioners court of such counties may establish and provide for the maintenance of the office of medical examiner. Population shall be according to the last preceding federal census.

Appointments and Qualifications

Sec. 2. The commissioners court shall appoint the medical examiner, who shall serve at the pleasure of the commissioners court. No person shall be appointed medical examiner unless he is a physician licensed by the State Board of Medical Examiners. To the greatest extent possible, the medical examiner shall be appointed from persons having training and experience in pathology, toxicology, histology and other medico-legal sciences. The medical examiner shall devote so much of his time and energy as is necessary in the performance of the duties conferred by this Article.

Assistants

Sec. 3. The medical examiner may, subject to the approval of the commissioners court, employ such deputy examiners, scientific experts, trained technicians, officers and employees as may be necessary to the proper performance of the duties imposed by this Article upon the medical examiner.

Salaries

Sec. 4. The commissioners court shall establish and pay the salaries and compensations of the medical examiner and his staff.

Offices

Sec. 5. The commissioners court shall provide the medical examiner and his staff with adequate office space and shall provide laboratory facilities or make arrangements for the use of existing laboratory facilities in the county.

Death Investigations

Sec. 6. Any medical examiner, or his duly authorized deputy, shall be authorized, and it shall be his duty, to hold inquests with or without a jury within his county, in the following cases:

1. When a person shall die within twenty-four hours after admission to a hospital or institution or in prison or in jail;

2. When any person is killed; or from any cause dies an unnatural death, except under sentence of the law; or dies in the absence of one or more good witnesses;

3. When the body of a human being is found, and the circumstances of his death are unknown;

4. When the circumstances of the death of any person are such as to lead to suspicion that he came to his death by unlawful means;

5. When any person commits suicide, or the circumstances of his death are such as to lead to suspicion that he committed suicide;

6. When a person dies without having been attended by a duly licensed and practicing physician, and the local health officer or registrar required to report the cause of death under Rule 41a, Sanitary Code of Texas, Article 4477, Revised Civil Statutes, General Laws, 46th Legislature, 1939, page 343, does not know the cause of death. When the local health officer or registrar of vital statistics whose duty it is to certify the cause of death does not know the cause of death, he shall so notify the medical examiner of the county in which the death occurred and request an inquest; and

7. When a person dies who has been attended immediately preceding his death by a duly licensed and practicing physician or physicians, and such physician or physicians are not certain as to the cause of death and are unable to certify with certainty the cause of death as required by Rule 40a, Sanitary Code of Texas, Article 4477, Revised Civil Statutes, Chapter 41, Acts, First Called Session, 40th Legislature, 1927. In case of such uncertainty the attending physician or physicians, or the superintendent or general manager of the hospital or institution in which the deceased shall have died, shall so report to the medical examiner of the county in which the death occurred, and request an inquest.

The inquests authorized and required by this Article shall be held by the medical examiner of the county in which the death occurred.

In making such investigations and holding such inquests, the medical examiner or an authorized deputy may administer oaths and take affidavits. In the absence of next of kin or legal representatives of the deceased, the medical examiner or authorized deputy shall take charge of the body and all property found with it.

Reports of Death

Sec. 7. Any police officer, superintendent of institution, physician, or private citizen who shall become aware of a death under any of the circumstances set out in Section 6 of this Article, shall immediately report such death to the office of the medical examiner or to the city or county police departments; any such report to a city or county police department shall be immediately transmitted to the office of medical examiner.

Removal of Bodies

Sec. 8. When any death under circumstances set out in Section 6 shall have occurred, the body shall not be disturbed or removed from the position in which it is found by any person without authorization from the medical examiner or authorized deputy, except for the purpose of preserving such body from loss or destruction or maintaining the flow of traffic on a highway, railroad or airport.

Autopsy

Sec. 9. If the cause of death shall be determined beyond a reasonable doubt as a result of the investigation, the medical examiner shall file a report thereof setting forth specifically the cause of death with the district attorney or criminal district attorney, or in a county in which there is no district attorney or criminal district attorney with the county attorney, of the county in which the death occurred. If in the opinion of the medical examiner an autopsy is necessary, or if such is requested by the district attorney or criminal district attorney, or county attorney where there is no district attorney or criminal district attorney, the autopsy shall be immediately performed by the medical examiner or a duly authorized deputy. In those cases where a complete autopsy is deemed unnecessary by the medical examiner to ascertain the cause of death, the medical examiner may perform a limited autopsy involving the taking of blood samples or any other samples of body fluids, tissues or organs, in order to ascertain the cause of death or whether a crime has been com-

mitted. In the case of a body of a human being whose identity is unknown, the medical examiner may authorize such investigative and laboratory tests and processes as are required to determine its identity as well as the cause of death. In performing an autopsy the medical examiner or authorized deputy may use the facilities of any city or county hospital within the county or such other facilities as are made available. Upon completion of the autopsy, the medical examiner shall file a report setting forth the findings in detail with the office of the district attorney or criminal district attorney of the county, or if there is no district attorney or criminal district attorney, with the county attorney of the county.

Disinterments and Cremations

Sec. 10. When a body upon which an inquest ought to have been held has been interred, the medical examiner may cause it to be disinterred for the purpose of holding such inquest.

Before any body, upon which an inquest is authorized by the provisions of this Article, can be lawfully cremated, an autopsy shall be performed thereon as provided in this Article, or a certificate that no autopsy was necessary shall be furnished by the medical examiner. Before any dead body can be lawfully cremated, the owner or operator of the crematory shall demand and be furnished with a certificate, signed by the medical examiner of the county in which the death occurred showing that an autopsy was performed on said body or that no autopsy thereon was necessary. It shall be the duty of the medical examiner to determine whether or not, from all the circumstances surrounding the death, an autopsy is necessary prior to issuing a certificate under the provisions of this section. No autopsy shall be required by the medical examiner as a prerequisite to cremation in case death is caused by the pestilential diseases of Asiatic cholera, bubonic plague, typhus fever, or smallpox, named in Rule 77, Sanitary Code of Texas, Article 4477, Revised Civil Statutes of Texas, 1925. All certificates furnished to the owner or operator of a crematory by any medical examiner, under the terms of this Article, shall be preserved by such owner or operator of such crematory for a period of two years from the date of the cremation of said body.

Records

Sec. 11. The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. The full report and detailed findings of the autopsy, if any, shall be a part of the record. Copies of all records shall promptly be delivered to the proper district, county, or criminal district attorney in any case where further investigation is advisable. Such records shall be public records.

Transfer of Duties of Justice of Peace

Sec. 12. When the commissioners court for any county having a population of one hundred twenty thousand or more, according to the last preceding Federal Census, shall establish the office of medical examiner, all powers and duties of justices of the peace in such county relating to the investigation of deaths and inquests shall vest

in the office of the medical examiner. Any subsequent General Law pertaining to the duties of justices of the peace in death investigations and inquests shall apply to the medical examiner in such counties as to the extent not inconsistent with this Article, and all laws or parts of laws otherwise in conflict herewith are hereby declared to be inapplicable to this Article.

Penalty

Sec. 13. Any person in violation of any provision of this Article, upon conviction, shall be punished by a fine of not more than five hundred dollars or by imprisonment in the county jail for not more than thirty days or both such fine and imprisonment.

CHAPTER FIFTY

FIRE INQUESTS

Art.
50.01 Investigations.
50.02 Proceedings.
50.03 Verdict.
50.04 Witnesses bound over.
50.05 Warrant for accused.
50.06 Testimony written down.
50.07 Compensation.

Article 50.01 [990] [1081] [1044] Investigations

When an affidavit is made by a credible person before any justice of the peace that there is ground to believe that any building has been unlawfully set or attempted to be set on fire, such justice shall cause the truth of such complaint to be investigated.

Art. 50.02 [991] [1082] [1045] Proceedings

The proceedings in such case shall be governed by the laws relating to inquests upon dead bodies. The officer conducting such investigations shall have the same powers as are conferred upon justices of the peace in the preceding Articles of this Chapter.

Art. 50.03 [992] [1083] [1046] Verdict

The jury after inspecting the place in question and after hearing the testimony, shall deliver to the justice holding such inquest its written signed verdict in which it shall find and certify how and in what manner such fire happened or was attempted, and all the circumstances attending the same, and who are guilty thereof, either as principal or accessory, and in what manner. If such a jury is unable to so ascertain it shall find and certify accordingly.

Art. 50.04 [993] [1084] [1047] Witnesses bound over

If the jury finds that any building has been unlawfully set on fire or has been attempted so to be, the justice holding such inquest

shall bind over the witnesses to appear and testify before the next grand jury of the county in which such offense was committed.

Art. 50.05 [994] [1085] [1048] Warrant for accused

If the person charged with the offense, if any, be not in custody, the justice of the peace shall issue a warrant for his arrest, and when arrested, such person shall be dealt with as in other like cases.

Art. 50.06 [995] [1086] [1049] Testimony written down

In all such investigations, the testimony of all witnesses examined before the jury shall be reduced to writing by or under the direction of the justice and signed by each witness. Such testimony together with the verdict and all bail bonds taken in the case shall be certified to and returned by the justice to the next district or criminal district court of his county.

Art. 50.07 [996] [1087] [1050] Compensation

The pay of the officers and jury making such investigation shall be the same as that allowed for the holding of an inquest upon a dead body, so far as applicable, and shall be paid in like manner.

CHAPTER FIFTY-ONE

FUGITIVES FROM JUSTICE

Art.
51.01 Delivered up.
51.02 To aid in arrest.
51.03 Magistrate's warrant.
51.04 Complaint.
51.05 Bail or commitment.
51.06 Notice of arrest.
51.07 Discharge.
51.08 Second arrest.
51.09 Governor may demand fugitive.
51.10 Pay of agent; traveling expenses.
51.11 Reward.
51.12 Sheriff to report.
51.13 Uniform Criminal Extradition Act.

Article 51.01 [997] [1088] [1051] Delivered up

A person in any other State of the United States charged with treason or any felony who shall flee from justice and be found in this State, shall on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

Art. 51.02 [998] [1089-1092] To aid in arrest

All peace officers of the State shall give aid in the arrest and detention of a fugitive from any other State that he may be held subject to a requisition by the Governor of the State from which he fled.

Art. 51.03 [999] [1090] [1053] Magistrate's warrant

When a complaint is made to a magistrate that any person within his jurisdiction is a fugitive from justice from another State, he shall issue a warrant of arrest directing a peace officer to apprehend and bring the accused before him.

Art. 51.04 [1000] [1091] [1054] Complaint

The complaint shall be sufficient if it recites:

1. The name of the person accused;
2. The State from which he has fled;
3. The offense committed by the accused;
4. That he has fled to this State from the State where the offense was committed; and
5. That the act alleged to have been committed by the accused is a violation of the penal law of the State from which he fled.

Art. 51.05 [1001] [1093, 4, 5] Bail or commitment

When the accused is brought before the magistrate, he shall hear proof, and if satisfied that the accused is charged in another State with the offense named in the complaint, he shall require of him bail with sufficient security, in such amount as the magistrate deems reasonable, to appear before such magistrate at a specified time. In default of such bail, he may commit the defendant to jail to await a requisition from the Governor of the State from which he fled. A properly certified transcript of an indictment against the accused is sufficient to show that he is charged with the crime alleged. One arrested under the provisions of this title shall not be committed or held to bail for a longer time than ninety days.

Art. 51.06 [1002] [1096, 7, 8] Notice of arrest

The magistrate who held or committed such fugitive shall immediately notify the Secretary of State and the district or county attorney of his county of such fact and the date thereof, stating the name of such fugitive, the State from which he fled, and the crime with which he is charged; and such officers so notified shall in turn notify the Governor of the proper State.

Art. 51.07 [1003] [1099] [1062] Discharge

A fugitive not arrested under a warrant from the Governor of this State before the expiration of ninety days from the day of his commitment or the date of the bail shall be discharged.

Art. 51.08 [1004] [1100] [1063] Second arrest

A person who has once been arrested under the provisions of this title and discharged under the provisions of the preceding Article or by habeas corpus shall not be again arrested upon a charge of the same offense, except by a warrant from the Governor of this State.

Art. 51.09 [1005] [1101] [1064] Governor may demand fugitive

When the Governor deems it proper to demand a person who has committed an offense in this State and has fled to another State, he may commission any suitable person to take such requisition. The accused, if brought back to the State, shall be delivered up to the sheriff of the county in which it is alleged he has committed the offense.

Art. 51.10 [1006] [1102] [1065] Pay of agent; traveling expenses

The officer or person so commissioned shall receive as compensation the actual and necessary traveling expenses upon requisition of the Governor to be allowed by such Governor and to be paid out of the State Treasury upon a certificate of the Governor reciting the services rendered and the allowance therefor.

Sec. 2. The commissioners court of the county where an offense is committed may in its discretion, on the request of the sheriff and the recommendation of the district attorney, pay the actual and necessary traveling expenses of the officer or person so commissioned out of any fund or funds not otherwise pledged.

Art. 51.11 [1007] [1103, 4, 5] Reward

The Governor may offer a reward for the apprehension of one accused of a felony in this State who is evading arrest, by causing such offer to be published in such manner as he deems most likely to effect the arrest. The reward shall be paid out of the State Treasury to the person who becomes entitled to it upon a certificate of the Governor reciting the facts which entitle such person to receive it.

Art. 51.12 [1008] Sheriff to report

Each sheriff upon the close of any regular term of the district or criminal district court in his county, or within thirty days thereafter, shall make out and mail to the Director of the Department of Public Safety a certified list of all persons, who, after indictment for a felony, have fled from said county. Such lists shall contain the full name of each such fugitive, the offense with which he is charged, and a description giving his age, height, weight, color and occupation, the complexion of the skin and the color of eyes and hair, and any peculiarity in person, speech, manner or gait that may serve to identify such person so far as the sheriff may be able to give them. The Director of the Department of Public Safety shall prescribe and forward to all sheriffs the necessary blanks upon which are to be made the lists herein required.

Art. 51.13 [1008a] Uniform Criminal Extradition Act

Definitions

Sec. 1. Where appearing in this Article, the term "Governor" includes any person performing the functions of Governor by authority of the laws of this State. The term "Executive Authority" includes the Governor, and any person performing the functions of Governor in a State other than this State, and the term "State", referring to a State other than this State, includes any other State organized or unorganized of the United States of America.

Fugitives from justice; duty of Governor

Sec. 2. Subject to the provisions of this Article, the provisions of the Constitution of the United States controlling, and any and all Acts of Congress enacted in pursuance thereof, it is the duty of the Governor of this State to have arrested and delivered up to the Executive Authority of any other State of the United States any person charged in that State with treason, felony, or other crime, who has fled from justice and is found in this State.

Form of Demand

Sec. 3. No demand for the extradition of a person charged with crime in another State shall be recognized by the Governor unless in writing, alleging, except in cases arising under Section 6, that the accused was present in the demanding State at the time of the commission of the alleged crime, and that thereafter he fled from the State, and accompanied by a copy of an indictment found or by information supported by affidavit in the State having jurisdiction of the crime, or by a copy of an affidavit before a magistrate there, together with a copy of any warrant which issued thereupon; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the Executive Authority of the demanding State that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that State; and the copy of indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the Executive Authority making the demand; provided, however, that all such copies of the aforesaid instruments shall be in duplicate, one complete set of such instruments to be delivered to the defendant or to his attorney.

Governor may investigate case

Sec. 4. When a demand shall be made upon the Governor of this State by the Executive Authority of another State for the surrender of a person so charged with crime, the Governor may call upon the Secretary of State, Attorney General or any prosecuting officer in this State to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered.

Extradition of persons imprisoned or awaiting trial in another State or who have left the demanding State under compulsion

Sec. 5. When it is desired to have returned to this State a person charged in this State with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another State, the Governor of this State may agree with the Executive Authority of such other State for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other State, upon condition that such person be returned to such other State at the expense of this State as soon as the prosecution in this State is terminated.

The Governor of this State may also surrender on demand of the Executive Authority of any other State any person in this State who is charged in the manner provided in Section 23 of this Act with having violated the laws of the State whose Executive Authority is making the demand, even though such person left the demanding State involuntarily.

Extradition of persons not present in demanding State at time of commission of crime

Sec. 6. The Governor of this State may also surrender, on demand of the Executive Authority of any other State, any person in this State charged in such other State in the manner provided in Section 3 with committing an act in this State, or in a third State, intentionally resulting in a crime in the State whose Executive Authority is making the demand, and the provisions of this Article not otherwise inconsistent, shall apply to such cases, even though the accused was not in that State at the time of the commission of the crime, and has not fled therefrom.

Issue of Governor's warrant of arrest; its recitals

Sec. 7. If the Governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance.

Manner and place of execution

Sec. 8. Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the State and to command the aid of all peace officers and other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this Article to the duly authorized agent of the demanding State.

Authority of arresting officer

Sec. 9. Every such peace officer or other person empowered to make the arrest, shall have the same authority, in arresting the accused, to command assistance therein, as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

Rights of accused person; application for writ of habeas corpus

Sec. 10. No person arrested upon such warrant shall be delivered over to the agent whom the Executive Authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court of record in this State, who shall inform him of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand and procure legal counsel; and if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such a writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the said agent of the demanding State.

Penalty for non-compliance with preceding section

Sec. 11. Any officer who shall deliver to the agent for extradition of the demanding State a person in his custody under the Governor's warrant, in wilful disobedience to Section 10 of this Act, shall be guilty of a misdemeanor and, on conviction, shall be fined not more than one thousand dollars or be imprisoned not more than six months, or both.

Confinement in jail, when necessary

Sec. 12. The officer or persons executing the Governor's warrant of arrest, or the agent of the demanding State to whom the prisoner may have been delivered may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person being chargeable with the expense of keeping.

The officer or agent of a demanding State to whom a prisoner may have been delivered following extradition proceedings in another State, or to whom a prisoner may have been delivered after waiving extradition in such other State, and who is passing through this State with such a prisoner for the purpose of immediately returning such prisoner to the demanding State may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping; provided, however, that such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding State after a requisition by the Executive Authority of such demanding State. Such prisoner shall not be entitled to demand a new requisition while in this State.

Arrest prior to requisition

Sec. 13. Whenever any person within this State shall be charged on the oath of any credible person before any judge or magistrate of

this State with the commission of any crime in any other State and except in cases arising under Section 6, with having fled from justice, or with having been convicted of a crime in that State and having escaped from confinement, or having broken the terms of his bail, probation or parole, or whenever complaint shall have been made before any judge or magistrate in this State setting forth on the affidavit of any credible person in another State that a crime has been committed in such other State and that the accused has been charged in such State with the commission of the crime, and except in cases arising under Section 6, has fled from justice, or with having been convicted of a crime in that State and having escaped from confinement, or having broken the terms of his bail, probation or parole and is believed to be in this State, the judge or magistrate shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this State, and to bring him before the same or any other judge, magistrate or court who or which may be available in or convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

Arrest without a warrant

Sec. 14. The arrest of a person may be lawfully made also by any peace officer or private person, without a warrant upon reasonable information that the accused stands charged in the courts of a State with a crime punishable by death or imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in the preceding section; and thereafter his answer shall be heard as if he had been arrested on a warrant.

Commitment to await requisition; bail

Sec. 15. If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and except in cases arising under Section 6, that he has fled from justice, the judge or magistrate must, by warrant reciting the accusation, commit him to the county jail for such time not exceeding thirty days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the Governor on a requisition of the Executive Authority of the State having jurisdiction of the offense, unless the accused give bail as provided in the next section, or until he shall be legally discharged.

Bail; in what cases; conditions of bond

Sec. 16. Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the State in which it was committed, a judge or magistrate in this State may admit the person arrested to bail by bond, with sufficient sureties and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond, and for his surrender, to be arrested upon the warrant of the Governor in this State.

Extension of time of commitment; adjournment

Sec. 17. If the accused is not arrested under warrant of the Governor by the expiration of the time specified in the warrant or bond, a judge or magistrate may discharge him or may recommit him for a further period not to exceed sixty days, or a judge or magistrate may again take bail for his appearance and surrender, as provided in Section 16, but within a period not to exceed sixty days after the date of such new bond.

Forfeiture of bail

Sec. 18. If the prisoner is admitted to bail and fails to appear and surrender himself according to the conditions of his bond, the judge, or magistrate by proper order, shall declare the bond forfeited and order his immediate arrest without warrant if he be within this State. Recovery may be had on such bond in the name of the State as in the case of other bonds given by the accused in criminal proceedings within this State.

Persons under criminal prosecution in this State at the time of requisition

Sec. 19. If a criminal prosecution has been instituted against such person under the laws of this State and is still pending, the Governor, in his discretion, either may surrender him on demand of the Executive Authority of another State or hold him until he has been tried and discharged or convicted and punished in this State.

Guilt or innocence of accused, when inquired into

Sec. 20. The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the Governor or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as above provided shall have been presented to the Governor, except as it may be involved in identifying the person held as the person charged with the crime.

Governor may recall warrant or issue alias

Sec. 21. The governor may recall his warrant of the arrest or may issue another warrant whenever he deems proper. Each warrant issued by the Governor shall expire and be of no force and effect when not executed within one year from the date thereof.

Fugitives from this State; duty of Governor

Sec. 22. Whenever the Governor of this State shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation or parole in this State, from the Executive Authority of any other State, or from the Chief Justice or an Associate Justice of the Supreme Court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this State, to some agent, commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this State in which the offense was committed, or in which the prosecution for such offense is then pending.

Application for issuance of requisition; by whom made; contents

Sec. 23. 1. When the return to this State of a person charged with crime in this State is required, the State's attorney shall present to the Governor his written motion for a requisition for the return of the person charged, in which motion shall be stated the name of the person so charged, the crime charged against him, the approximate time, place and circumstances of its commission, the State in which he is believed to be, including the location of the accused therein at the time the motion is made and certifying that, in the opinion of the said State's attorney the ends of justice require the arrest and return of the accused to this State for trial and that the proceeding is not instituted to enforce a private claim.

2. When the return to this State is required of a person who has been convicted of a crime in this State and has escaped from confinement, or broken the terms of his bail, probation or parole, the prosecuting attorney of the county in which the offense was committed, the parole board, or the warden of the institution or sheriff of the county, from which escape was made, shall present to the Governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement, or the circumstances of the breach of the terms of his bail, probation or parole, the State in which he is believed to be, including the location of the person therein at the time application is made.

3. The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or magistrate, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer, parole board, warden or sheriff may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application, with the action of the Governor indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information, and affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the Secretary of State to remain on record in that office. The other copies of all papers shall be forwarded with the Governor's requisition.

Costs and expenses

Sec. 24. In all cases of extradition, the commissioners court of the county where an offense is alleged to have been committed, or in which the prosecution is then pending may in its discretion, on request of the sheriff and the recommendation of the prosecuting attorney, pay the actual and necessary expenses of the officer or person commissioned to receive the person charged, out of any county fund or funds not otherwise pledged.

Immunity from service of process in certain civil cases

Sec. 25. A person brought into this State by, or after waiver of, extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceeding to answer which he is being or has

been returned, until he has been convicted in the criminal proceeding, or if acquitted, until he has had reasonable opportunity to return to the State from which he was extradited.

Written waiver of extradition proceedings

Sec. 25a. Any person arrested in this State charged with having committed any crime in another State or alleged to have escaped from confinement, or broken the terms of his bail, probation, or parole may waive the issuance and service of the warrant provided for in Sections 7 and 8 and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge or any court of record within this State a writing which states that he consents to return to the demanding State; provided, however, that before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in Section 10.

If and when such consent has been duly executed it shall forthwith be forwarded to the office of the Governor of this State and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding State, and shall deliver or cause to be delivered to such agent or agents a copy of such consent; provided, however, that nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding State, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights or duties of the officers of the demanding State or of this State.

Non-waiver by this State

Sec. 25b. Nothing in this Act contained shall be deemed to constitute a waiver by this State of its right, power or privilege to try such demanded person for crime committed within this State, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any crime committed within this State, nor shall any proceedings had under this Article which result, or fail to result in, extradition to be deemed a waiver by this State of any of its right, privileges or jurisdiction in any way whatsoever.

No right of asylum, no immunity from other criminal prosecutions while in this State

Sec. 26. After a person has been brought back to this State by, or after waiver of extradition proceedings, he may be tried in this State for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition.

Interpretation

Sec. 27. The provisions of this Article shall be interpreted and construed as to effectuate its general purposes to make uniform the law of those States which enact it.

CHAPTER FIFTY-TWO

COURT OF INQUIRY

Art.
52.01 Courts of Inquiry conducted by district judges.
52.02 Evidence; deposition; affidavits.
52.03 Subpoenas.
52.04 Rights of witnesses.
52.05 Witness must testify.
52.06 Contempt.
52.07 Stenographic record; public hearing.
52.08 Criminal prosecutions.
52.09 Costs.

Article 52.01 Courts of Inquiry conducted by district judges

When a judge of any District Court of this State, acting in his capacity as magistrate, has good cause to believe that an offense has been committed against the laws of this State, he may summon and examine any witness in relation thereto in accordance with the rules hereinafter provided, which procedure is defined as a "Court of Inquiry".

Art. 52.02 Evidence; Deposition; Affidavits

At the hearing at a Court of Inquiry, evidence may be taken orally or by deposition, or, in the discretion of the District Judge, by affidavit. If affidavits are admitted, any witness against whom they may bear has the right to propound written interrogatories to the affiants or to file answering affidavits. The District Judge in hearing such evidence, at his discretion, may conclude not to sustain objections to all or to any portion of the evidence taken nor exclude same; but any of the witnesses or attorneys engaged in taking the testimony may have any objections they make recorded with the testimony and reserved for the action of any court in which such evidence is thereafter sought to be admitted, but such court is not confined to objections made at the taking of the testimony at the Court of Inquiry. Without restricting the foregoing, the Judge may allow the introduction of any documentary or real evidence which he deems reliable, and the testimony adduced before any grand jury.

Art. 52.03 Subpoenas

The District Judge or his clerk has power to issue subpoenas which may be served within the same territorial limits as subpoenas issued in felony prosecutions or to summon witnesses before grand juries in this State.

Art. 52.04 Rights of Witnesses

All witnesses testifying in any Court of Inquiry have the same rights as to testifying as do defendants in felony prosecutions in this

State. Before any witness is sworn to testify in any Court of Inquiry, he shall be instructed by the District Judge that he is entitled to counsel; that he cannot be forced to testify against himself; and that such testimony may be taken down and used against him in a later trial or trials ensuing from the instant Court of Inquiry. Any witness or his counsel has the right to fully cross-examine any of the witnesses whose testimony bears in any manner against him.

Art. 52.05 Witness must testify

A person may be compelled to give testimony or produce evidence when legally called upon to do so at any Court of Inquiry; however, if any person refuses or declines to testify or produce evidence on the ground that it may incriminate him under the laws of this State, then the District Judge may, in his discretion, compel such person to testify or produce evidence but the person shall not be prosecuted or subjected to any penalty or forfeiture for, or on account of, any transaction, matter or thing concerning which he may be compelled to testify or produce evidence at such Court of Inquiry.

Art. 52.06 Contempt

Contempt of court in a Court of Inquiry may be punished by a fine not exceeding One Hundred Dollars ($100.00) and any witness refusing to testify may be attached and imprisoned until he does testify.

Art. 52.07 Stenographic Record; Public Hearing

All evidence taken at a Court of Inquiry shall be transcribed by the court reporter and all proceedings shall be open to the public.

Art. 52.08 Criminal Prosecutions

If it appear from a Court of Inquiry or any testimony adduced therein, that an offense has been committed, the Judge shall issue a warrant for the arrest of the offender as if complaint had been made and filed.

Art. 52.09 Costs

All costs incurred in conducting a Court of Inquiry shall be borne by the county in which said Court of Inquiry is conducted; provided, however, that where the Attorney General of Texas has submitted a request in writing to the District Judge for the holding of such Court of Inquiry, then and in that event the costs shall be borne by the State of Texas and shall be taxed to the Attorney General and paid in the same manner and from the same funds as other court costs.

CHAPTER FIFTY-THREE

COSTS AND FEES

Art.
53.01 Peace officers.
53.02 Fees of peace officers.
53.03 Fee of State's attorney.
53.04 Officers in examining court.
53.05 In district and county courts.
53.06 Trial fee.
53.07 Justice of peace salary.

Article 53.01 [1065] [1173] Peace Officers

The following fees shall be allowed the sheriff, or other peace officer performing the same services in misdemeanor cases, to be taxed against the defendant on conviction:

1. For executing each warrant of arrest or capias, or making arrest without warrant, $3.00.

2. For summoning each witness, $1.00.

3. For serving any writ not otherwise provided for, $2.00.

4. For taking and approving each bond, and returning the same to the courthouse, when necessary, $2.00.

5. For each commitment or release, $2.00.

6. Jury fee, in each case where a jury is actually summoned, $2.00.

7. For attending a prisoner on habeas corpus, when such prisoner, upon a hearing, has been remanded to custody or held to bail, for each day's attendance, $4.00.

8. For conveying a witness attached by him to any court out of his county, $5.00 for each day or fractional part thereof, and his actual necessary expenses by the nearest practicable public conveyance, the amount to be stated by said officer, under oath, and approved by the judge of the court from which the attachment issued.

9. For conveying a prisoner after conviction to the county jail, for each mile, going and coming, by the nearest practicable route by private conveyance, fifteen cents per mile, or by railway, fifteen cents per mile.

10. For conveying a prisoner arrested on a warrant or capias issued from another county to the court or jail of the county from which the process was issued, for each mile traveled, going and coming, by the nearest practicable route, fifteen cents.

11. For each mile he may be compelled to travel in executing criminal process and summoning or attaching witness, fifteen cents. For traveling in the service of process not otherwise provided for, the sum of fifteen cents for each mile going and returning. If two or more persons are mentioned in the same writ, or two or more writs

in the same case, he shall charge only for the distance actually and necessarily traveled in the same.

Art. 53.02 [1067] [1176] [1129] Fees of Peace Officers

Constables, marshals or other peace officers who execute process and perform services for justices in criminal actions, shall receive the same fees allowed to sheriffs for the same services.

Art. 53.03 [1068] [1177] [1130] Fee of State's Attorney

The attorney representing the state before a justice court shall receive no fee for his appearance before said court in a case involving the violation of any penal statute or of the Uniform Act Regulating Traffic on Highways.

Art. 53.04 [1072] [1182] Officers in Examining Court

Sheriffs and constables serving process and attending any examining court in the examination of a misdemeanor case shall be entitled to such fees as are allowed by law for similar services in the trial of such cases, not to exceed $3.00 in any one case, to be paid by the defendant in case of final conviction.

Art. 53.05 [1073] [1183] [1133] In District and County Courts

In each criminal action tried by a jury in the district or county court, or county court at law, a jury fee of $5.00 shall be taxed against the defendant if he is convicted.

Art. 53.06 [1074] [1184] [1134] Trial Fee

In each case of conviction in a county court or a county court at law, whether by a jury or by a court, there shall be taxed against the defendant or against all defendants, when several are held jointly, a trial fee of $5.00, the same to be collected and paid over in the same manner as in the case of a jury fee; and there shall be no trial fee allowed in a justice court in a case involving the violation of any penal statute or of the Uniform Act Regulating Traffic on Highways.

Art. 53.07 Justice of Peace Salary

(a) Every justice of the peace in the State of Texas shall be compensated by salary, the amount of which shall be determined by the commissioners court.

(b) All fines imposed by justices of the peace and all trial fees and other fees which justices of the peace are required by law to collect shall be deposited to the credit of the Officers' Salary Fund of the county, or whichever fund is used to pay the salaries of district, county or precinct officers.

(c) This Article shall not affect the salary of any justice of the peace who received compensation on a salary basis before the effec-

tive date of this Code, but such justices of the peace shall continue to receive the salary provided by law.

(d) All justices of the peace compensated on a fee basis before the effective date of this Code shall receive a salary to be determined by the commissioners court of each county, not to exceed the maximum amount of fees which they were entitled by law to retain before the effective date of this Code.

CHAPTER FIFTY-FOUR

MISCELLANEOUS PROVISIONS

Art.
54.01 Severability clause.
54.02 Repealing clause.
54.03 Emergency clause.

Article 54.01 Severability Clause

If any provision, section or clause of this Act or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications hereof which can be given effect without the invalid provision, section or clause, and to this end the provisions of this Act are declared to be severable.

Art. 54.02 Repealing Clause

Section 1. (a) Except as otherwise provided in this Article 54.02, all laws relating to criminal procedure in this State that are not embraced, incorporated, or included in this Act and that have not been enacted during the Regular Session of the 59th Legislature are repealed.

(b) None of the following articles of the Code of Criminal Procedure of Texas, 1925, in force on the effective date of this Act, is repealed: 52; 52-1 through 52-161, both inclusive; 367D through 367K, both inclusive; 781B-1, 781B-2; 944 through 951, both inclusive; 1009 through 1035, both inclusive; 1037 through 1056, both inclusive; 1058 through 1064, both inclusive; and 1075 through 1082, both inclusive.

Sec. 2. (a) All laws and parts of laws relating to criminal procedure omitted from this Act have been intentionally omitted, and all additions to and changes in such procedure have been intentionally made. This Act shall be construed to be an independent Act of the Legislature, enacted under its caption, and the articles contained in this Act, as revised, rewritten, changed, combined, and codified, may not be construed as a continuation of former laws except as otherwise provided in this Act. The existing statutes of the Revised Civil Statutes of Texas, 1925, as amended, and of the Penal Code of Texas, 1925, as amended, which contain special or specific provisions of criminal procedure covering specific instances are not repealed by this Act.

(b) A person under recognizance or bond on the effective date of this Act continues under such recognizance or bond pending final disposition of any action pending against him.

Art. 54.03 Emergency Clause

The fact that the laws relating to criminal procedure in this State have not been completely revised and re-codified in more than a century past and the further fact that the administration of justice, in the field of criminal law, has undergone changes, through judicial construction and interpretation of constitutional provisions, which have been, in certain instances, modified or nullified, as the case may be, necessitates important changes requiring the revision or modernization of the laws relating to criminal procedure, and the further fact that it is desirous and desirable to strengthen, and to conform, various provisions in such laws to current interpretation and application, emphasizes the importance of this legislation and all of which, together with the crowded condition of the calendar in both Houses, create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days be suspended, and said Rule is hereby suspended, and that this Act shall take effect and be in force and effect from and after 12 o'clock Meridian on the 1st day of January, Anno Domini, 1966, and it is so enacted.

Passed the Senate on March 9, 1965, by a viva voce vote; Senate refused to concur in House amendments and requested appointment of Conference Committee on May 19, 1965; House granted request of the Senate on May 19, 1965; Senate refused to adopt Conference Committee Report and requested appointment of a new Committee on May 25, 1965; House granted request on May 27, 1965; Senate adopted Conference Report by a viva voce vote on May 27, 1965.

Passed the House on May 19, 1965, with amendments: Yeas 98, Nays 39; House granted request of Senate for appointment of Conference Committee on May 19, 1965; request of Senate granted May 27, 1965; House adopted Conference Report by a non-record vote May 27, 1965.

Approved: June 18, 1965

Effective: January 1, 1966